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In the Supreme Court of the United States

October Term, 1970

No. 936

DADE COUNTY SCHOOL BOARD, et al.,
Petitioner,

vs.

HERBERT PATE, et al.,
Plaintiff-Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

GEORGE C. BOLLES

BOLLES, GOODWIN,
RYSKAMP & WARE
1410 N. E. Second Avenue
Miami, Florida 33132

Attorneys for Petitioner

MIAMI REVIEW — 371-4853 — 377-3721

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APPENDIX

RELEVANT DOCKET ENTRIES

	Dated
Mandate of Fifth Circuit Court of Appeals....	Aug. 12, 1970
Attached as Exhibit A Memorandum Opinion Approving Desegregation Plan for Dade County Public Schools With Modifications and Final Judgment	June 26, 1970
Attached as Exhibit B Supplemental Order Approving Desegregation Plan for Dade County Public Schools, as Modified, and Amended Final Judgment	July 24, 1970
Remand to District Court	June 5, 1970
Order Appointing Bi-Racial Committee	Aug. 10, 1970
Dade County School Board's Desegregation Plan	Mar. 31, 1970
Department of Health, Education and Welfare Plan submitted to Court	May 15, 1970
Order Approving Interim Desegregation Plan for Dade County Public Schools....	Aug. 29, 1970
Order Approving Teacher Integration Plan and Denying Motion by Intervenors for Immediate Pupil Integration	Jan. 26, 1970

RELEVANT DOCKET ENTRIES (cont.)

	Dated
Certificates of City of Miami, City of Coral Gables, City of Miami Beach and Board of County Commissioners submitted at February 3, 1970 hearing as Defendant's Exhibit 10	Feb. 2-3, 1970
Testimony 2/2/70 re History of Desegregation in Dade County	Feb. 2, 1970
Oral Findings of Fact of hearing on February 3, 1970	Feb. 3, 1970
Order	Apr. 16, 1970
School Board's Reply to Memorandum Opinion and Motion for Rehearing of	July 6, 1970
Order Requesting Supplemental Report	July 10, 1970
Reply to Order Requesting Supplemental Report	July 20, 1970
Amendment to Reply To Order Requesting Supplemental Report (Amending Exhibit 2)	July 21, 1970
Order on Motion of Dade County School Board for Rehearing and Reconsideration	July 31, 1970
Order	Sept. 4, 1970

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 29,039 and 29,179

HERBERT PATE, et al.,

Plaintiffs,

vs.

DADE COUNTY SCHOOL BOARD, et al.,

Defendants-Appellees,

vs.

CORAL REEF CIVIC ASSOCIATION, INC., et al.,

Intervenors-Appellants,

HERBERT PATE, et al.,

Plaintiffs-Appellees,

vs.

DADE COUNTY SCHOOL BOARD, et al.,

Defendants-Appellees-Cross Appellants,

vs.

ALICE LOVE, CARSWELL WASHINGTON, et al.,

Intervenors-Appellants-Cross Appellees,

Appeals from the United States District Court for the Southern District of Florida

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(August 12, 1970)

Before BROWN, Chief Judge, MORGAN and INGRAHAM, Circuit Judges. MORGAN, Circuit Judge:

The question in this school desegregation case is whether the Dade County school system has been converted from a dual to a unitary school system, as defined in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), under tne district court's orders and memorandum opinions dated June 26, 1970, and July 24, 1970.

Following the approach of *Ellis* v. *The Board of Public Instruction of Orange County, Florida*, 5 Cir., 1970, 423 F.2d 203; *Mannings* v. *The Board of Public Instruction of Hillsi.. ough County, Florida*, 5 Cir., 1970, ____ F.2d____ [No. 28,643, May 11, 1970]; *Davis* v. *Board of School Commissioners of Mobile County*, 5 Cir., 1970, ____F.2d____ [No. 29,332, June 8, 1970]; and *Bradley* v. *Board of Public Instruction of Pinellas County, Florida*, 5 Cir., 1970, ____F.2d____ [No. 28,639, July 1, 1970], we herein review all of the six criteria of *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), in determining whether Dade County has been effectively converted into a unitary school system.

FACULTY AND STAFF

In its final desegregation plan filed on March 31, 1970, the board states that:

> The staffs of elementary schools have been reorganized so that in each elementary school the proportion of black and white teachers approximates the 24% black — 76% white ratio existing among all elementary teachers in the school system.

The staffs of junior high schools have been reorganized so that in each junior high school the proportion of the black and white teachers approximates the 21% black — 79% white ratio existing among all junior high teachers in the school system.

The staffs of senior high schools have been reorganized so that in each senior high school the proportion of black and white teachers approximates the 12.2% black — 87.8% white ratio existing among all senior high teachers in the school system.

Likewise, administrative personnel, teacher aides and other staff personnel have been reorganized so as to accomplish desegregation. Effectuation of this portion of the board's plan, which the district court assumed to have already been effectuated as per its February 1, 1970, deadline, must be continued for the 1970-1971 school year.

TRANSPORTATION, FACILITIES, AND EXTRACURRICULAR ACTIVITIES

The board's plan also effectively desegregates the transportation, the facilities, and the extracurricular activities of the Dade County school system. It calls for the continuation of its practice of making accessible to school children of both races these three elements of the school system devoid of racial discrimination.

There being no objection to these elements, the district court properly found that they have been effectively desegregated by the board's plan.

The record also indicates that there has been in existence in Dade County a majority-to-minority transfer policy. In addition to the continuation of this feature of the school system's operation, the board is commended to establish a bi-racial committee similar in function to that established in *Ellis*, supra, and as described in the district court's opinion in this case (see Appendix "A", p. 27).

STUDENT ASSIGNMENT

The Dade County school board (hereinafter board) submitted its final desegregation plan as to student body desegregation on March 31, 1970. The Department of Health, Education and Welfare (hereinafter HEW) submitted its desegregation plan on May 15, 1970. Hearings on these plans were conducted by the district court on May 22 and June 12, 1970. That court's findings of facts and final judgment with reference to pupil assignments were entered June 26, 1970, and are contained in its Memorandum Opinion Approving Desegregation Plan for Dade County Public Schools with Modifications and Final Judgment attached as Appendix "A". In response to the district court's orders to show cause contained in that memorandum opinion, the board submitted two reports to the district court on July 6 and July 20, 1970, which answered with specific detail why certain schools in the system could not be paired, grouped or rezoned so as to effectively disestablish the dual school system. These reports form the basis of the district court's modifications of its June 26 opinion, which modifications are embodied in its Supplemental Order Approving Desegregation Plan for Dade County Public Schools, as Modified, and Amended Final Judgment, attached as Appendix "B". Together, Appendices "A" and "B" make up the district court's final

order approving a desegregation plan for the Dade County public school system.

The board will operate 218 schools in the Dade County school system for the 1970-71 school year (161 elementary, 40 junior high, and 17 senior high schools). There will be 244,000 students in the system, of whom 57,900 or 23% will be Negro. The school system will be served by 187 buses, which, as of June 1970, transported some 30,376 students throughout the system. Forty additional buses have been ordered by the board and should be available for the 1970-71 school year.

The district court approved of the board's plan but substantially modified it by adopting some of the recommendations made by HEW, the Dade County Classroom Teachers Association (C.T.A.). intervening parents and neighborhood groups, and by making some modifications of its own initiative. As seen in Appendix "C", the board's plan leaves 36 schools all—or virtually all-Negro, housing 37,672 Negro students or 64% of the Negro student population. The modifications contained in both the district court's opinions (Appendix "A" and Appendix "B") reduce these figures substantially, but still leave 22 schools all—or virtually all-Negro, housing 25,595 or 44% of the Negro student population. Though great diligence has been taken by the district court in reducing this percentage, we find that many of the reasons given for not achieving a greater degree of desegregation and the final results accomplished are unacceptable. In keeping with *Ellis*, supra, *Mannings*, supra, *Davis*, supra, and *Bradley*, supra, we have studied the maps, the various plans, and the many details covered by the district court's thorough opinions, and have on our own initiative made the modifications which hereinafter

comprise the body of this opinion. The purported obstacles to pairing, grouping or rezoning, which are meticulously covered in the district court's opinions in Appendices "A" and "B", have been given careful consideration. These obstacles including traffic hazards, school capacities, individual school programs, format and curricula, walking distances, natural barriers, and grade levels in each school — all of which are given substantive merit in the district court's opinion in Appendix "B". Of particular importance, in this case is the recurring problem of the Spanish-speaking students in the school system who number 50,500 and comprise 21% of the entire Dade County student population. These are the children of the more than 300,000 Cuban refugees who have settled in Miami. Many of the schools in which these Spanish-speaking students are predominant are situated adjacent to many of the all—or virtually all-Negro schools in the central portion of the City of Miami.

However real all of these obstacles may be, the mandates of *Brown* v. *Board of Education of Topeka*, 349 U.S. 294 (1954), *Alexander*, supra; and *Adams* v. *Mathews*, 5 Cir., 1968, 403 F.2d 181, leave little room for exception. The obstacles presented by the board admittedly make difficult the modifications needed to desegregate many of Dade County's schools. But these problems

> "cannot be accepted if the [board] plan's implementation fails to result in substantial desegregation . . . Certainly, each of these [problems] is a relevant consideration for any plan which the board may hereafter adopt. However, none of these factors or even all combined are of overriding importance of the one factor the Indianola School Board did not consider: effective promotion of desegregation."

United States v. *Indianola Municipal Separate School Dist.*, 5 Cir., 1969, 410 F.2d 626, 628.

The following modifications reduce the number of Negro students attending all—or virtually all-Negro schools from 44% to 24% of the entire Negro student population. Implementation of these modifications effectively desegregate the Dade County School system. However, the district court is not precluded hereby from approving any plan submitted by the board which will achieve substantially the same results as achieved by our modifications or an even greater degree of desegregation. Such a plan must, of course, be approved by the district court and must be implemented as of the beginning of the 1970-71 school year. If no such plan is submitted, the district court is directed to implement the following modifications:

ELEMENTARY SCHOOLS

IT IS ORDERED that Lewis (582 Negroes, 18 whites) be paired with Cooper (108 Negroes, 507 whites) as per the district court's order.

IT IS ORDERED that West Homestead (680 Negroes, 110 whites) be paired with Florida City (50 Negroes, 400 Whites) as per the district court's order.

Moton (formerly 98% Negro) has been desegregated by grouping it with Bel-Aire and Perrine, both formerly predominantly white schools. Such a grouping has resulted in a percentage of Negroes in each school of 42%, 46% and 36% respectively. The district court properly denied the board's request for a rehearing on this grouping.

Pine Villa (759 Negroes, 66 whites) must remain virtually all-Negro due to its isolation in the southern area of the district. HEW made no recommendations as to this school.

Martin (1,025 Negroes, 0 whites) is left all-Negro by the district court's orders. The board, in its recent report, interjected that a pairing of Martin with Colonial Drive (194 Negroes, 520 whites) would disrupt the "pod type" teaching technique and facility at Colonial Drive. As pointed out in *Indianola*, supra, such an objection cannot be permitted to impede the desegregation of a dual school system. It is therefore ORDERED that:

(1) Martin be paired with Colonial Drive, or

(2) Martin be paired with Vineland (41 Negroes, 1009 whites) which is more distant but still adjacent to the Martin attendance zone.

IT IS ORDERED that Bunche Park (840 Negroes, 0 white) be grouped with Parkview (10 Negroes, 505 whites) and Scott Lake (9 Negroes, 841 whites) as recommended by the HEW plan and as approved by the district court.

North County is left 88% Negro by the district court's order, and, since it is isolated in the northern portion of the school system, it must remain as such. HEW made no recommendation as to this school.

Rainbow Park (formerly 100% Negro) and Opa-locka (formerly 2% Negro) were ordered rezoned in the district court's first opinion (Appendix "A", pp. 9-10) as per HEW

recommendations, resulting in a racial composition of 419 Negroes, 551 whites, attending Opa-locka, and 290 Negroes, 400 whites attending Rainbow Park. There being no valid objections to this pairing, it is ORDERED that they be paired.

IT IS ORDERED that Young (433 Negroes, 77 whites) likewise be paired with Westview (0 Negro, 685 whites), there being no valid objections to this pairing.

In the north-central district of the school system, there are 11 all—or virtually all-Negro schools tightly clustered in the central area of the City of Miami. Of these schools, the district court's opinions leave nine all—or virtually all-Negro. As to six of these schools — Drew, Evans, Liberty City, Olinda, Orchard Villa, and Poinciana Park — there appears to be no feasible method of desegregating these schools. The attendance zones of all six of these schools are bordered by attendance zones of schools which are either already paired with outlying substantially white schools or are all-Negro themselves.

However, as to the remaining five all—or virtually all-Negro schools, West Little River (formerly 92% Negro) has been paired with Broadmoor (formerly 1% Negro) as recommended by the HEW plan, and as approved by the district court (Appendix "A", p. 11).

IT IS ORDERED that Arcola Lake (740 Negroes, 100 whites) be paired with Blanton (101 Negroes, 674 whites). There are no valid objections to this pairing raised in the district court's opinion (Appendix "B", p. 12), and further investigation would only result in delay in desegregating this school.

Holmes Complex (1575 Negroes, 0 whites) houses its large all-Negro student body in three buildings, situated three or four blocks from each other. Close to this complex are Little River (385 Negroes, 715 whites) and Edison Park (470 Negroes, 415 whites). There being no valid objections to this grouping presented by the board or in the district court's opinion (Appendix "B", pp. 13-14), it is ORDERED that these three schools be grouped. The capacities of the schools in this grouping could best be utilized by housing the Headstart programs and grades one and two from all three schools, plus grade three of Holmes Complex in Holmes Complex, thus leaving intact the primary facilities there. Grades three and four from all three schools (except grade three of Holmes Complex) could be housed in Edison Park, using portables at that site; and grades five and six from all three schools (except Edison Park which has no sixth grade) could be housed in Little River. However, the ultimate allocation of grades and student enrollment to the three schools in this grouping is left to the discretion of the board. While the resulting racial composition of such a grouping is 2,430 Negroes, 1,130 whites, many of whom are Spanish-speaking, it is possible that the board may devise a more desirable plan to desegregate Holmes Complex before the commencement of the 1970-71 school year.

IT IS ORDERED that Gladeview (622 Negroes, 13 whites) be paired with Hialeah (0 Negro, 895 whites). The schools are under two miles apart and there are many crossings of the Seaboard Airline Railroad available in between the paired schools. Capacities and language programs do not prevent this pairing, and the resulting racial composition is 622 Negroes, and 908 whites.

IT IS ORDERED that Lorah Park (740 Negroes, 0 white) be paired with Curtiss (0 Negro, 570 whites). None of the purported obstacles to this pairing raised by the board (Appendix "B", p. 14) is to preclude the desegregation of Lorah Park.

IT IS ORDERED that Allapattah (1160 Negroes, 10 whites) be paired with Santa Clara (174 Negroes, 521 whites). Again, the objections to such a pairing based on the language problem at Santa Clara, the traffic conditions, and the lack of a sixth grade at Allapattah (Appendix "B", pp. 4-5) cannot be fixed as obstacles to the desegregation of the Allapattah school. However, since the racial composition resulting from such a pairing is 1332 Negroes and 532 whites, it is possible that the board may devise a more desirable method of desegregating the Allapattah school before the commencement of the 1970-71 school year.

Douglas (1372 Negroes, 28 whites) is bordered on the south by two predominantly white schools — Riverside (20 Negroes, 1825 whites) and Southside (7 Negroes, 343 whites). Both of these schools being no more than two miles distant from Douglas, it is ORDERED that Douglas:

(1) be paired with Riverside, again discarding the board's objections as to such pairing (Appendix "B", pp. 5-6), or

(2) be grouped with Riverside and Southside, with grade allocation and student enrollments in the grouped schools to be determined by the board.

Under either alternative, a desirable racial composition is to result.

Bethune (formerly 97% Negro) has been paired with Melrose (formerly 3% Negro) as recommended by HEW and as approved by the district court.

As to the desegregation of Dunbar (944 Negro, 71 whites and Wheatley (1005 Negroes, 0 white), we adopt the language of the district court used in its opinion in Appendix "B", pp. 7-8, except as it applies to Douglas. The district court is directed to insure that the plan eventually devised by the board effectively desegregates these two all—or virtually all-Negro schools and is implemented for the 1970-71 school year.

IT IS ORDERED that Pharr (850 Negroes, 0 white) be paired with Comstock (15 Negroes, 1435 whites) as recommended by HEW. Again, the board's objections to such a pairing (Appendix "B", p. 7 cannot be recognized as valid reasons for not desegregating the Pharr school. The allocations of grade levels (which may require the use of portables) and students in these paired schools is left to the discretion of the board.

Earlington Heights (902 Negroes, 18 whites) and Floral Heights (835 Negroes, 0 white) are left all—or virtually all-Negro by the district court's opinions. HEW has made no recommendation. These two schools are within the same concentrated area of the six Negro schools in the north-central district that were left all-Negro, supra. There does not appear to be any feasible method of desegregating these two schools.

As to the Carver school (593 Negroes, 0 white) the district court had adopted the HEW rezoning plan, adding such modifications (see Appendix "B", pp. 9-10) which

we deem appropriate in that under either of the district court's alternatives, Carver is effectively desegregated. The district court is directed to insure that the board acts promptly in carrying out its modified HEW rezoning plan, so that Carver opens the 1970-71 school year on a desegregated basis.

Tucker (712 Negroes, 0 white) is left all-Negro under the district court's opinions. The reasons for not desegregating this school (Appendix "B", pp. 10-11) cannot be recognized as valid objections to the pairing of Tucker and Dade (5 Negroes, 660 whites). Therefore, it is ORDERED that Tucker:

(1) be paired with Dade, or

(2) be grouped with Dade and Coconut Grove, the farthese distance among them being only one mile, such grouping resulting in a more desirable racial composition.

JUNIOR HIGH SCHOOLS

There are four junior high schools which remain all— or virtually all-Negro under the district court's opinions (see Appendix "C"). Our modifications, hereinafter discussed, apply only to these four junior high schools.

Drew Junior High (1550 Negroes, 0 white) is situated in the northern part of that concentration of the Negro elementary schools in the center of the City of Miami discussed above, and is also over three miles from the nearest predominantly white junior high school. HEW made no recommendation as to the desegregation of the

school. The district court properly rejected the C.T.A. plan (Appendix "A", p. 20). We, therefore, find that there is no feasible method of desegregating this school. However, many of its students will have attended elementary schools which are desegregated under the modifications heretofore set forth.

B. T. Washington Junior High (1646 Negroes, 224 whites) is bordered on the south by two 100%-white junior high schools — Citrus Grove (1679 whites) and Merrittt (1005 whites). The three schools are only two miles distant at the farthest point. Many students who live closer to Citrus Grove and Merritt are zoned into the Washington zone. It is therefore ORDERED that Washington be desegregated:

(1) by pairing it with Citrus Grove, or

(2) by grouping it with Citrus Grove and Merritt.

Under either alternative, the resulting racial composition is desirable. The allocation of grade levels and students among the three schools is to be determined by the board. Again, those objections to grouping or pairing raised by the board and given recognition in the district court's opinion (Appendix "B", pp. 15-17) cannot stand as valid reasons for not desegregating the B. T. Washington Junior High School.

Allapattah Junior High School (1480 Negroes, 0 white) is located in the center of that concentration of the Negro elementary schools discussed above. However, to the east and south, and contiguous thereto are Miami

Edison (745 Negroes, 500 whites, grades six through eight) and Lee (105 Negroees, 1095 whites, grades seven through nine) both of which are within two miles of Allapattah. It is ORDERED that these three schools be grouped. Again, the board's objections to this grouping (Appendix "B", pp. 17-19) cannot be recognized here. However, since the grade levels attending these three schools vary, the difficult problem of student allocation within the three schools' capacities is left to the expertise of the board. It is also possible that, with approval of the district court, the board may devise a rezoning plan involving these three schools, or some other plan that effectively desegrates the Allapattah school prior to the commencement of the 1970-71 school year. The district court is directed to implement the grouping plan discussed above for the 1970-71 school year if an alternative plan from the board which effectively desegregates Allapattah is not forthcoming.

The fourth and final all—or virtually all-Negro junior high school in Dade County is Brownsville (1440 Negroes, 0 white) on the western portion of the concentration of Negro schools in central Miami. To the west and contiguous thereto is Miami Springs (282 Negroes, 1283 whites). On the basis of reasons which have heretofore been rejected, the district court concluded that the Brownsville school could not be desegregated (Appendix "B", pp. 19-20). However, these reasons, being unacceptable to this court, do not prevent the desegregation of the Brownsville school by either of the two following methods:

(1) by pairing Brownsville with Miami Springs, being two and one-half miles apart, or

(2) rezone both zones so that the Miami Springs zone is extended into the Brownsville

> zone, taking one-half of Brownsville's Negro students (approximately 720 students) and placing them in the Miami Springs zone. Likewise, the Brownsville zone lines are to be extended into the northeastern area of the Miami Springs zone so as to take into the Brownsville zone approximately 720 white students. This rezoning would involve only a small amount of additional traveling for the students affected thereby.

Carver Junior High School has been effectively desegregated by the board's pairing plan, approved by the district court (Appendix "A", pp. 21-23).

Senior High Schools

There are only two senior high schools in the Dade County system which remain all—or virtually all-Negro under the board's plan.

Miami-Jackson (2193 Negroes, 387 whites) has been effectively desegregated under the district court's direction that attendance zones of Miami-Jackson and Miami Senior High be strictly adhered to (Appendix "A", pp. 24-25). The HEW report reveals that if these two attendance zones were made firm, approximately 1,000 more white students would be attending Miami-Jackson. The district court is therefore directed to insure that the school board's policy which allows transfers under an "affidavit of attendance" be halted, that the attendance zones be strictly adhered to, and that only those transfers be allowed which follow the majority-to-minority policy as set forth in the district's opinion (Appendix "A", pp. 26-27).

Miami-Northwestern (2690 Negroes, 0 white) is the remaining all-Negro senior high school. The district court's rejection of the C.T.A.'s campus grouping plan is supported by substantial evidence that such a plan would call for extensive additional bussing. HEW made no recommendation as to this high school. We find that there is no feasible method of desegregating this high school. It is a large school in the center of the Negro school portion of central Miami. Of the four surrounding senior high schools, three are desegregated and the other is over five miles away. However, many of its students will have attended either a desegregated elementary or junior high school. The district court is directed to insure that the board make the majority-to-minority transfer policy known and readily available to the students attending this school.

DEFICIENCIES TO BE REMEDIED

In conclusion, one of the six criteria which go to make up a unitary school system has been left unsatisfied. The district court is directed to implement the above modifications in Dade County for the 1970-71 school year, supplanted only by modifications submitted by the board within sufficient time to be effectuated by the commencement of the 1970-71 school year which achieve the same or a higher degree of desegregation as achieved by the above modifications. It is not intended by this opinion that the district court be deprived of its discretion to adjust our modifications and any subsequently submitted by the board. Its discretion is limited, however, to the extent that no adjustments may diminish the degree of desegregation required by this court. Of course, the school board and the district court are under a continuing duty to appraise the system in the light of actual conditions and experience and,

within the limits we have just indicated, make whatever changes as are required to assure the maintenance of a unitary system.

The mandate herein shall issue immediately and no stay will be granted for filing Petition for Rehearing or Petition for Writ of Certiorari.

This cause is remanded to the district court for proceedings not inconsistent with this opinion.

AFFIRMED in part; REVERSED in part with directions.

[TITLE OMITTED]

MEMORANDUM OPINION APPROVING DESEGREGATION PLAN FOR DADE COUNTY PUBLIC SCHOOLS WITH MODIFICATIONS AND FINAL JUDGMENT

This school desegregation case presents the issue of whether the Dade County School System is now unitary within the meaning of Supreme Court decisions in *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19 (1969); *Green v. County School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968) and the decision of the United States Court of Appeals for the Fifth Circuit in *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969).

The case sub judice had its genesis on August 25, 1969 when the Dade County School Board (hereinafter

the Board) removed to this Court a civil action filed in the Circuit Court of the Eleventh Judicial Circuit In and For Dade County, Florida, which attacked, on state grounds, an Interim Desegregation Plan adopted by the Board. That plan was approved by an order which I entered on August 29, 1969.

On December 10, 1969, pursuant to the mandate of *Singleton, supra*, I entered an order which, inter alia, directed the Board to take steps, not later than February 1, 1970, to comply with the provisions of that decision relating to the Desegregation of Faculty and Other Staff, Majority to Minority Transfer Policy, Transportation, School Construction and Site Selection and Attendance Outside System of Residence.

In its Final Desegregation Plan filed March 31, 1970, the Board specifically delineated its compliance with the above requirements of *Singleton, supra*, and with *Green, supra*, with respect to extracurricular activities and facilities. There has been no complaint regarding any of these particular elements which go to disestablishing a dual school system by any of the many objectors. Accordingly, the Court must assume there has been compliance in these areas. Thus, there remains only a determination of whether the composition of student bodies meets the necessary tests.

Hearings were held on January 23, May 22 and June 12, 1970 on the proposed plan and objections.

Findings of Fact made in the Order entered January 26, 1970 are incorporated herein by reference.

The Board urged at the hearing on May 22 that its plan came within the purview of a true "neighborhood system" as defined by *Ellis v. The Board of Public Instruction of Orange County, Florida*, ____F.2d____, (5th Cir., 1970) (Slip Opinion No. 29,124 dated Feb. 17, 1970). I find otherwise. Because of the criteria demanded in *Ellis*, as further delineated in *James Andrews, et al. v. City of Monroe, et al.*, ____F.2d____, (5th Cir. 1970) (Slip Opinion No. 29,358 dated April 23, 1970), such a plan is infeasible in Dade County. Clearly, the inflexible *Ellis* standards are not present in the system proposed by the Board.

The criteria used in reviewing, and modifying where indicated, the Board's plan were: (1) degree of desegregation, (2) proximity of students to schools serving their grade level; (3) capacity of such schools; (4) manmade and natural boundaries such as thoroughfares, railroad tracks, etc. and (5) avoidance of cross-bussing.

The Board will operate in the school year 1970-71 an urban school system of 218 schools and 244,000 students in the southeast corner of the Florida peninsula. Of this number, 57,900 or 23% will be Black. There are some 26 communities in the County, all of which project westerly from the Atlantic Ocean which forms the eastern boundary.

The plan filed by the Board on March 31, 1970 reflects a substantial effort, made in good faith, to create a unitary school system. However, under the guidelines laid down for this Court by recent decisions of the Fifth Circuit, the plan as it exists must be held to be ineffective in disestablishing the dual school system.

By an order entered April 16, 1970 the Florida School Desegregation Consulting Center, School of Education, University of Miami, Coral Gables, Florida, was requested to review the Board's plan and all objections filed to it. The Center was asked to report its recommendations to the Court with the stated objective of meeting the constitutional standard of a unitary system. The report from the Center was filed by the Department of Health, Education and Welfare (hereinafter HEW).

The HEW plan limits its recommendations, except in one particular, to the elementary schools. That one exception concerns Miami Jackson High School which will be 85% black under the Board's plan.

Leave to intervene was granted to some persons who objected to portions of the plan. The Dade County Classroom Teachers' Association (hereinafter CTA), representing approximately 75% of the teachers in the system actively participated as an intervenor. It urged, in general, a much more substantial increase in the mixing of the races, particularly at the junior and senior high school levels. The American Civil Liberties Union proposes that the Court require a fixed ratio in every school in the County. The law does not require such drastic action to achieve a unitary system. The objections filed by other intervenors will be considered below.

The Court is indebted to intervenors Honorable Claude R. Kirk, Governor of Florida, and Honorable William C. Cramer, a Member of Congress from Florida, for submitting briefs on the subject of bussing as it relates to integration.

Wide publicity was given the HEW report. This has resulted in a plethora of letters, telegrams, pictures, maps and petitions being sent to the Court from parents of children who, presumably, would be affected by the HEW changes. Virtually all of these expressed no opposition to integration per se but adjured the Court not to require their children to cross highways, walk past nearby schools to attend one farther away, or enter so-called "ghetto" areas to attend school. I have given careful consideration to these objections vis a vis my duty to effect a unitary school system in Dade County. They have been very helpful in understanding the problems of each school.

PUPIL ASSIGNMENTS

The plan submitted by the Board allows 20 schools to remain with 100% Black enrollments. Additionally, there will be 16 schools with various percentages of Black enrollments ranging from 99% down to 85%. There would be 53 schools with all White enrollments and 40 schools with percentages ranging from 99% to 85%.

The plan submitted by HEW would bring below 85% Black enrollment five 100% Black schools and seven 85% to 99% Black schools. At the same time three 100% White schools and ten 85% to 99% White schools would be brought below 85% White enrollments.

The HEW plan makes no recommendation for changing the Board plan on the junior high and senior high levels. Hence, fifteen 100% Black schools (11 elementary, 3 junior high and 1 senior high) and nine 85% to 99% Black schools (7 elementary, 1 junior high and 1 senior high) will remain under the HEW plan.

With the modifications to be described below the School Board plan does effectively disestablish the dual school system which exists in Dade County. For the sake of convenience the Court will discuss the modifications it feels are necessary by reviewing the HEW plan in the same order as evidence was presented at the May 22, 1970 meeting.

ELEMENTARY SCHOOL LEVEL SOUTH DISTRICT
Group #1

The Board plan proposes what must be described as square zones with a school somewhere near the middle of the zone. The HEW plan completely rezones the group of schools creating elongated zones. The HEW plan would require additional transportation of 32 pupils to the Lewis School and 20 pupils to the Redondo School. Students living in the north section of the Lewis zone pass within ¼ mile of two schools. Students living across the street from the West Homestead school will walk nearly two miles to the Redondo school. The HEW plan is unacceptable despite its effectiveness in disestablishing the dual school system in this District.

The Court is at a disadvantage in making modifications in the Board plan because it does not have the statistical data necessary for informative decisions. The testimony reveals that the Cooper school is 113 pupils under capacity (2-4 classrooms) and the West Homestead school is 85 pupils over capacity. Page seven of the HEW plan shows Lewis to be exactly at capacity and Florida City to be over capacity by 90 students. It appears to the Court that the over capacity could be eliminated while encouraging desegregation of the Cooper and West Homestead

Schools by slight changes in the boundary lines of these four schools. The East-West boundary between Lewis and Florida City could be moved to the South by 90 students. The East-West boundary between Lewis and Cooper could be moved to the South and the North-South boundary between West Homestead and Cooper could be moved to the West so as to equalize the capacities of those three schools.

The School Board shall show cause within ten days of the date hereof why such a modification will not promote desegregation and is not administratively, economically or educationally feasible.

Group #2

Again the School Board plan offers a zoning plan. The HEW plan would pair these three schools thus eliminating one predominantly White school. No additional transportation would be required. The Bel-Aire School would be approximately 30 students over capacity. However, the Administration feels this is a feasible alternative. The Court is aware that there are hazards along the line of travel to the Moton School but feels that with a minimum of effort by the appropriate governmental agencies these hazards could be reduced. Nevertheless these hazards should not impede what is otherwise an effective plan.

The School Board is directed to adopt this modification.

Group #3

The Court agrees that there is no feasible method to desegregate the Pine Villa School.

ELEMENTARY SCHOOL LEVEL — SOUTHWEST DISTRICT

The Board plan leaves the Martin School with a 100% Black enrollment. It phases out the Lee School which prior to the 1969-70 school year was an all-Black School but which was as of June, 1970 a school with 72% Black enrollment. The HEW plan offers no solution to the Martin problem and defers to the Court on the wisdom of phasing out the Lee School.

Again the Court is without sufficient statistical data. The record shows that as a school housing grades 1 to 5, Martin will have an enrollment of 1,025 students. The sixth grade is housed at the Richmond Heights Junior High School. There are seven portables at the Martin School. The Colonial Drive School houses grades 1 thru 6 with a projected enrollment of 720 students, 27% of whom are Black. The Court notes what appear to be large undeveloped areas between the two schools on the south side of Coral Reef Drive.

The Board shall show cause within ten days of the date hereof why the Martin and Colonial Drive Schools cannot be paired. Emphasis should be directed at encouragement of desegregation, administrative inconvenience, relative capacities and additional transportation required.

Since the May 22, 1970 hearing the Court has granted intervenors Corbett and Ellis a rehearing so that they might offer testimony on the phasing out of the Lee School. Testimony was taken on June 12, 1970.

The School Board has made the determination that the pairing of Lee and Ludlum in the 1969-70 school year was a failure. The Court agrees, it appears to be useless to attempt a pairing of Lee with any of the other neighboring schools. The Board plan eliminates the Lee zone and in effect drives wedges into the Black residential area surrounding the Lee School from each of four surrounding predominantly White schools. The percentages of Black students will now vary from 8% to 38% instead of 1% to 64% at the end of the 1969-70 school year. Nor does it appear that the phasing out of one of the four neighboring schools would encourage desegregation as well. Without pairing or massive cross-walking of virtually entire student bodies Lee could not continue to operate effectively as a desegregated school.

It should be added that the Lee facility will be used to house various programs all of which have been seeking a permanent home for some time. It was the Board's decision to convert the use of the Lee facility and the Court will not interfere with that decision since it promotes the establishment of a unitary school system.

ELEMENTARY SCHOOL LEVEL— NORTHWEST DISTRICT

Group #1

The School Board plan again offers square zones. The HEW plan proposes a grouping. Since the three schools tend to be at opposite ends of their zones, approximately 274 additional students will have to be bussed over two miles. The grouping plan would create a substantial undercapacity at the Bunche Park School while it creates an

over capacity at the Parkview School requiring at least two portables. It should be noted that the Board plan does not require crossing of either Northwest 167th Street or Northwest 17th Avenue.

The Court finds the HEW plan to be unreasonable. Being unable to find another method to desegregate the Bunche Park School, the Court reluctantly embraces the Board plan.

Group #2

The Court agrees that desegregation of the North County School cannot be accomplished without extensive use of transportation.

Group #3

The Board plan suggests two zones with boundaries determined by natural barriers. The North-South boundary between the zones is eliminated by the HEW plan. Instead, the HEW plan would make the Rainbow Park zone a long thin zone running East and West. The net effect is to put some of the Opa Locka School's White students in the Rainbow Park School and some of the Rainbow Park Black students in the Opa Locka School. This plan requires approximately 35 additional students to be bussed and many students to travel across Northwest 27th Avenue.

The HEW plan effectively disestablishes the dual school system in this area. The Board is directed to adopt this modification.

Group #4

The Board plan zones these two school according to natural boundaries. The HEW plan would pair them by eliminating the boundary between them at Opa Locka Boulevard. The pairing requires an additional 19 students to be bussed and most students to cross Opa Locka Boulevard. Both schools were already well within their capacities.

It should be noted that the Young School is projected to have an enrollment of 85% Black students. The Court is hopeful that under the majority to minority transfer policy to be described below, many white students will seek to attend the Young School from the Opa Locka School and vice versa. Therefore no further modification of the Board plan is required to create a unitary school system in this District.

ELEMENTARY SCHOOL LEVEL— NORTH CENTRAL DISTRICT

There are ten schools in this District clustered together in the heart of an all-Black residential community. Eight of the schools (Drew, Evans, Holmes, Liberty City, Lorah Park, Olinda, Orchard Villa and Poincianna Park) have 100% Black student bodies. Two others (Arcola Lake and Gladeview) have predominantly Black student bodies. The only method by which these schools could be effectively desegregated is by cross-bussing with predominantly white schools in the Northeast District. The law does not compel this Court to require the School Board to desegregate these schools in that manner. The School Board plan is, therefore, adopted without change as to these ten schools.

The School Board plan would allow the West Little River School to remain with a 92% Black student body. The HEW plan suggests a pairing with the Broadmoor School (1% Black). This alternative would require that approximately 55 students would be transported to the West Little River School. Others would have to travel across Northwest 27th Avenue. Under either plan, both schools are projected to be slightly over capacity.

The Board is directed to adopt this modification. The Court notes that the attendance zones of both Broadmoor and Miami Park are varied under the HEW plan. The Court leaves to the discretion of the Board the decision of whether such a variance should be made or, if made in another manner, whether it might reduce the number of students transported to the West Little River School. The Board is limited to the extent that no substantial change shall be made in the racial compositions of the two schools.

ELEMENTARY SCHOOL LEVEL— SOUTH CENTRAL DISTRICT

The Board plan allows to remain 5 all-Black schools (Carver, Floral Heights, Pharr, Tucker and Wheatley) and 5 predominantly Black schools (Allapattah, Bethune, Douglas, Dunbar and Earlington Heights). As discussed below, the HEW plan would affect several of these schools. HEW concedes that Allapattah, Earlington Heights, Floral Heights, Wheatley and Douglas cannot be desegregated without substantial transportation. The Court is unwilling to make that concession without further evidence.

The statistics the Court has reveal that the Allapattah School houses 1170 pupils in grades 1 thru 5. The Buena

Vista School houses 695 pupils in grades 1 thru 6. It appears that these two schools could be paired. The Board shall show cause within ten days of the date hereof why such a modification will not promote desegregation and is not administratively, economically or educationally feasible.

Likewise the statistics in the Board plan reveal that the Douglas School houses 1400 pupils in grades 1 thru 6. The Riverside School houses 850 pupils in grades 1 thru 6. It appears that these two schools could be paired. The Board shall, in a like manner, show cause why this pairing cannot be accomplished.

The Board plan proposes two separate zones for the Bethune and Melrose Schools. The HEW plan suggests a pairing of the two schools. The testimony reveals that the pairing would not present any problems with capacities nor would it require additional transportation. The sole objection is that the East-West Expressway is eliminated as a natural barrier between the two schools. Considering that the Expressway is elevated and that many Melrose students are required, under the Board plan, to traverse Northwest 36th Street and Northwest 27th there is no reason why these schools cannot be paired.

The Board is directed to adopt this modification.

At this point, for the sake of better understanding the Court will depart from the pattern of presentation of the HEW plan. The Court notes a concentration of schools between Biscayne Boulevard and the North-South Expressway on the east and west, respectively, and 14th Street and 36th Street on the south and north, respectively.

There are five schools in this area; Dunbar (93% Black), West Dunbar (15% Black); Wheatley (100% Black), Miramar (20% Black) and Buena Vista (7% Black).

The Board proposes to do nothing to desegregate these schools. The HEW plan would group the Dunbar, Miramar and Buena Vista Schools. The Board offers the sole objection that grouping destroys their neighborhood plan. The Court feels that the grouping should be accomplished.

In this regard, the Court notes that the capacities of the remaining two schools in the area are such that by a modification of the HEW grouping plan substantially more desegregation could be accomplished. For instance, if the Wheatley school was rezoned and used in the grouping suggested by the HEW, Dunbar could be paired with the West Dunbar School. Alternatively, it might be feasible to pair Miramar with Wheatley and to pair Dunbar with West Dunbar. Again, Buena Vista could be substituted for West Dunbar in that pairing.

The Board shall show cause within ten days of the date hereof why they cannot involve all five of these schools in a plan to disestablish the dual school system in this area. The same criteria as ordered above shall be considered. Should the Board show good cause why additional desegregation cannot be accomplished it is the Order of this Court the grouping plan presented by the HEW plan be adopted by the Board.

The Board plan provides separate zones for the Kelsey Pharr and Comstock Schools with the boundary between them falling on the East-West Expressway. The HEW

plan pairs these two schools. The evidence reveals that the Kelsey Pharr School has a strict capacity of 840 students without portables. The Comstock School presently has a capacity of 1200 with portables. The Board plan properly balances these capacities. The pairing plan would require the transportation of approximately 123 students to the Kelsey Pharr School.

It appears to the Court that the capacity problem could be solved in one of two ways. Either portables could be moved from the Comstock School to the Kelsey Pharr School or the Kelsey Pharr School be designed to house only grades 5 and 6 within present capacities or with the addition of but a few portables.

The Board is directed in a like manner as above to show cause why the HEW pairing plan cannot be accomplished with the modifications suggested above.

In the Coral Gables area the Board offers a strict zone plan for five schools: Sunset (8% Black), Carver (100% Black), Coral Gables (0% Black), Tucker (100% Black), and Dade (1% Black). The HEW plan would rezone the first three schools and pair the last two. All five will be considered together because the rezoning and pairing plan are closely interrelated.

In rezoning Carver, Sunset and Coral Gables, the HEW plan puts 400 White students into the Carver zone from the Sunset and Coral Gables zones and puts 400 Black students in the Coral Gables zone from the Carver zone. This plan creates an over capacity of over 100 students at Coral Gables which might force that school to begin double sessions because there is no room for portables

on the site. Approximately 57 students will require transportation. Many students will be required to cross South Dixie Highway. Many students will be required to walk greater distances.

The Court is mindful that the Sunset school is proposed to absorb students who formerly attended the Lee School. Also it appears that the HEW plan rezones many students from the Dade School zone into the Coral Gables school zone. The net effect of the HEW plan is to take 150 students out of the Sunset school and place them in the Coral Gables School. It would seem that by returning 100 students to Sunset from Carver and returning 100 students to Carver from Coral Gables the capacities of the three schools will be equalized. If White students and Black students are returned to Sunset and Carver, respectively, no additional transportation will be required and both Carver and Coral Gables will remain as desegregated schools.

The Court favors the HEW plan of rezoning but is concerned with equalizing capacities. The Board shall investigate the above suggestions and investigate rezoning in connection with the pairing of the Dade and Tucker Schools and show cause, in a like manner as above, why the HEW rezoning plan cannot be accomplished. In the alternative, if it is found that a rezoning plan is not feasible, the Board shall show cause why a ten-hour day or some alternative scheduling technique cannot be utilized.

The HEW plan would pair the Tucker and Dade Schools. Mr. Little testified that the proposed pairing plan would create an overcapacity of about 100 students at both schools. Apparently this is caused by increasing the stu-

dent population by an amount equal to the number of 5th and 6th graders who are not now allowed to attend Tucker. However, it does not appear that Mr. Little considered two factors. First, the figure used by the HEW plan for enrollment at the Tucker School is overstated by 200 students, thus distorting the HEW plan figures. Second, the HEW rezoning plan discussed immediately above rezones many students out of the Dade attendance zone.

Mr. Little also testified that there is no space at Tucker for portables but there may be space at Dade. The pairing plan would require many students to cross South Dixie Highway and travel routes which are presently undergoing sewer construction.

The Court favors the HEW pairing plan and feels that the School Board can fashion a plan utilizing rezoning techniques, portables and modified school days which will effectively disestablish the dual school system without sacrificing traditional values. It might be possible to have the Dade and Tucker schools house grades 1 thru 5 in a paired situation and place grade 6 in Carver Junior High School.

The Board shall, in a like manner, show cause why this pairing cannot be accomplished.

ELEMENTARY SCHOOL LEVEL
NORTHEAST DISTRICT

The Northeast District encompasses the area east of the North-South Expressway and the Sunshine State Parkway and North of 110th Street. Within its boundaries are the municipalities of Miami Beach, North

Miami Beach and North Miami. There are 22 elementary schools with only 216 Black students.

There is no method by which the schools in this District can be effectively desegregated other than by massive cross-bussing with the predominantly Black residential areas of the North Central District and the South Central District. The Court, therefore, adopts the plan of the Board as it pertains to the Northeast District.

JUNIOR HIGH SCHOOL LEVEL

The Board proposes a zoning plan designed to allow every student to attend the closest school to his home that has the capacity to house him. The guidelines used by the Board are many faceted: (1) proximity to schools; (2) capacity of schools; (3) natural barriers; (4) safety and welfare of the children. All of the optional zones which were present in the Interim Plan adopted by this Court on August 29, 1970 have been eliminated.

The HEW plan makes no recommendation to change the Board plan with one exception. The HEW plan takes the attitude that since most of the students who formerly attended Dorsey will be bussed to other schools all these students should be bussed to predominantly white schools. This suggestion is unacceptable for two reasons. First, it ignores the relative capacities of the other junior high schools in this part of the County. It is unlikely that the predominantly White schools could handle all of the former Dorsey students without severe overcrowding. Second, many former Dorsey students can walk to nearby schools. For both reasons the Court rejects the suggestion of the HEW plan.

Utilizing the Board plan at this level without modification there will be remaining three all-Black schools, one predominantly Black school, six all-white schools and twelve predominantly White schools. The remaining seventeen schools all have a substantial racial mixture.

The Court will discuss the objections to the Board plan in the same order as it discussed the elementary level schools.

SOUTH DISTRICT

The only objection to the Board plan in this District centers around the Richmond Heights School. The alternative is popularly called the Roberts Plan. The HEW plan attests to the educational soundness of this plan. The Board has also conceded to its educational soundness.

The Roberts Plan would rezone the boundaries of the Richmond Heights, Palmetto and Cutler Ridge Schools. It is similar to Recommendation 41 of the report rendered July 23, 1969 by the Florida School Desegregation Consulting Center. The apparent sole goal of the plan is to distribute the Black students at the Richmond Heights School between the Palmetto and Cutler Ridge Schools so that they will all have similar mixes of the races.

The Board offers several reasons for its decision not to implement the Roberts Plan. It creates a non-contiguous zone whereby students would be transported past the Richmond Heights School. The Palmetto School is already 150 students over capacity even though it utilizes a triple shift. The Richmond Heights School is several hundred students under capacity solely because it

is projected to be on a ten-hour day. The Richmond Heights School houses the Martin Elementary School sixth grade because the Martin School does not have the capacity even though it is utilizing seven portables. The Roberts Plan requires the sixth grade to return to the Martin School from which other students will be transported out to other elementary schools. The Board puts emphasis upon their decision that it is at the lesser of two evils to have students on a triple shift at Palmetto.

The Board has made an administrative decision that should not be interfered with by the Court. The schools in this District are presently substantially desegregated. The Court orders no change in the plan offered by the Board.

SOUTHWEST DISTRICT

The only school in this District which is the subject of an objection is the Richmond Heights School discussed in the South District section. The Court orders no change in the Board plan.

NORTHWEST DISTRICT

The plan proposed by the CTA would involve three schools in this District. (Filer, North Dade and Parkway). Since only the Palm Springs School does not have members of the minority race, the HEW plan offers no recommendation. The CTA suggestion concerning the Filer School will be discussed below in the South Central District section.

The CTA plan is designed solely for the purpose of creating a racial mix of 40% Black students in both schools. North Dade is 63% Black and Parkway is 20% Black. The plan would pair the two. In response to the argument that this would force students to cross the Palmetto By-pass, the CTA points out that the Board plan requires students in the Carol City attendance zone to cross the same highway. The plan also would require some additional transportation.

The most significant objection to the CTA plan is that since there are three grades and but two schools either the Board will have to put one and one-half grades in each school or split the students between the two schools by some method such as the first and last thirteen letters of the alphabet. This is clearly educationally unsound. Since both schools exist as desegregated schools there is no reason to destroy the traditional organization of the junior high school. For this reason the Court rejects the CTA plan and adopts the Board plan.

NORTH CENTRAL DISTRICT

Other than the plan offered by the CTA involving the Drew, Madison, Mann and Edison Schools no objection is lodged against the Board plan. These schools will be discussed below in the South Central District section. The HEW plan recognizes that the only school in this District that does not have a substantial racial mixture is Drew. The HEW plan asserts that the only method by which the Drew school could be desegregated is by utilizing massive cross-bussing of students between non-contiguous zones. Again you have the recurring problem of violating the traditional concept of a three-grade junior high school. The Court adopts the Board plan.

SOUTH CENTRAL DISTRICT

There are two schools (Allapattah and Brownsville) in this District which remain all-Black schools and one school (Washington) which remains a predominantly Black school. The HEW plan asserts that it would require cross-bussing between non-contiguous zones to effectively desegregate these schools. The CTA plan is the only objection to the Board plan.

The CTA plan recognizes that the Ada Merritt School is an all-White school. The plan would pair the Ada Merritt School with the Washington School. To the objection that pairing would require students to cross the Miami River, the CTA replies that the Board has designed the Miami Springs attendance zone to require students to cross the Little River. However, there is a crossing immediately adjacent to the Miami Springs School. The Board further objects to the basis that the present boundaries effectively utilize the capacities of the two schools. The Court feels there is no compelling reason to pair these schools since Washington is projected to have an enrollment of 88% Black students. Therefore, the Court rejects the CTA plan.

The CTA plan also attempts to desegregate the Allapattah, Brownsville and Drew Schools by cross-bussing students with the predominantly White schools to the west (Filer and Miami Springs). Also included as potential cross-bussing routes are three desegregated schools in the North Central District (Madison, Mann and Miami Edison) and two non-contiguous schools in the Northeast District which are within a six mile radius of this area and which are already receiving transported students from the Drew School (Nautilus and Fisher). The Court com-

mends the CTA for its inventiveness but feels that the law does not require this type of massive cross-bussing to create a unitary school system. The plan offered by the CTA is rejected and the plan of the Board is adopted.

The Board has adopted a pairing plan involving the Ponce de Leon and Carver Schools whereby the seventh grade would be housed at the Carver School and the eighth and ninth grades would be housed at the Ponce de Leon School. The Carver School will have a 24% Black enrollment while the Ponce de Leon School will have a 26% Black enrollment. This plan is adamently supported by the intervenors Jane L. Mack and others. The HEW plan makes no reference to this segment of the Board plan.

The pairing plan is strenuously opposed by two groups of intervenors (Donald J. Murray and others and The Concerned Parents of the Riviera Section). Both groups offer a zoning plan commonly referred to as the Ring-Horwich Plan. The intended purpose of this plan is to desegregate one additional school (Shenandoah) while keeping both the Ponce de Leon and Carver Schools as traditional three-grade junior high schools. By redrafting the boundary lines between these two schools and the Shenandoah School (1% Black) the Black student enrollment at the Shenandoah School will be increased. After this rezoning Shenandoah will be 12% Black, Carver will be 19% Black and Ponce de Leon will be 16% Black, thus equalizing the percentages of Black students at the three schools.

The rezoning plan would require more than minimal additional transportation. Since the Shenandoah School is three miles from the Carver School many students within walking distance of Carver will need to be transported to

Shenandoah. Other students living close to the Carver School will require transportation to the Ponce de Leon School.

The supporters of the Ring-Horwich Plan have attempted to show that it is best educationally to utilize the traditional three-grade junior high school at all three of these schools. The School Board would concede this as a general principle. However, the Board has decided that because of the lack of full facilities (library, shops, laboratories, etc.) at the Carver School it is best to house all of this area's eighth and ninth graders in the Ponce de Leon School. Seventh graders do not require a full range of school facilities whereas eighth and ninth graders do require them. Under the Ring-Horwich Plan the eighth and ninth graders at the Carver School would be disadvantaged by the lack of facilities. The facilities that do exist at the Carver School, if used solely by seventh graders, would enhance their educational experience.

It therefore appears that the Board has made its decision based upon educational and administrative reasons. To interfere with the Board's decision solely to desegregate one more predominantly Black School when a unitary school system presently exists appears to the Court to be unreasonable. The majority to minority transfer plan to be discussed below should aid in the further desegregation of the Shenandoah School.

Accordingly, the Court adopts the Board pairing plan.

NORTHEAST DISTRICT

There are no predominantly Black schools in the Northeast District. All six schools have some pupils of the minority race under the Board plan. The only objection raised, other than the CTA plan discussed above, is presented by Michael A. Frank who, through his father as next friend, has filed his own lawsuit which has been consolidated into this case.

The objection, simply stated, is that it is a violation of Plaintiff's constitutional rights to require him to attend a school (Fisher) further from his home while other students are transported to his former school (Nautilus) from distances up to 12 miles past several other schools. Additionally, Black students are transported from non-contiguous zones into both schools. The Board asserts that the primary, in fact the sole, reason for this arrangement is to equalize the capacities of the various schools involved.

Since the Board made its recent decision to close down the Dorsey School at least ten schools are being used to house the students that attended Dorsey. Drew has been severely over capacity for years. Fisher and Nautilus were the only schools within a reasonable distance which could house this overflow. Likewise the students living in the northern part of Miami Beach were transported to Fisher because it was the nearest school with available facilities.

The Court feels that no constitutional issue is presented by the Frank objection. The objection is simply an attack upon an administrative decision of the Board and nothing more. The Frank objection is rejected and the Board plan is adopted.

SENIOR HIGH SCHOOL LEVEL

The Board plan proposes a system of zoning whereby each student attends a full three-year high school. Distances and capacities are the primary consideration. There would be remaining one all-White school, nine predominantly White schools, one all-Black school and one predominantly Black school.

The HEW plan suggests that if the boundary between the Miami Jackson School (85% Black) and the Miami Senior High School was made firm and the two attendance zones were strictly adhered to there would be approximately 1000 more White students attending Miami Jackson. The Board estimates that this figure would be closer to 700 students. In previous years between 200 and 300 students in the Miami Jackson attendance zone have been attending Miami Senior High by use of a procedure called "affidavit of attendance." The evidence is somewhat conflicting on whether or not the Board plan proposes to strictly adhere to the attendance zones.

The CTA plan proposes a pairing of these two schools. The evidence reveals that a pairing plan is prohibitively expensive by virtue of the extensive bussing required. There are presently 100 students being transported to the Miami Jackson School. Pairing would require transportation for 1500 students to the Miami Jackson School. A similar situation would be created at Miami Senior High School. This transportation would require an aggregate outlay of $330,000 the first year with recurring expenses of $100,000 annually. On page 4 of the transcript of the February 2, 1970 hearing this Court found that the "Board is utilizing its allowable full tax millage, has an annual

budget of 70 to 75 million dollars and is urgently in need of more funds."

The pairing plan is rejected and the plan of the Board is accepted with the direction that the attendance zones of these two schools be strictly adhered to, modified only by the majority to minority transfer policy to be discussed below.

The plan offered by the CTA points out that there are over 5000 Black students attending Miami Northwestern (100% Black) and Miami Jackson (85% Black). This means that approximately 55% of all Black high school students attend one of these two schools. The CTA plan seeks to desegregate the Miami Northwestern School by offering alternative grouping plans.

First, the CTA plan would establish a grouping or campus by combining the attendance zones of Miami Northwestern, Miami Edison (27% Black) and Miami Central (30% Black). The campus concept would create a ratio of White to Black students of approximately 47% to 53%. The Miami Edison School is one mile east of the Miami Northwestern School and the Miami Northwestern School is less than two and one-half miles south from the Miami Central School. The geographic area is comparable to that of the Coral Gables Senior High School attendance zone.

Second, the CTA proposes a campus grouping of Miami Northwestern, Hialeah (1% Black) and Miami Springs (9% Black). Evidence relating to these schools was taken at a prior hearing.

The Board offered no objections on the administrative and educational level although the Court feels assured that the same problems exist here as discussed above in the grouping of junior high schools in the Northwest District. The evidence does reveal, however, that the campus grouping plan would be detrimental to the normal high school experience. Students would be hampered in participating in extra-curricular activities (debate, athletics, band, etc.) from which activities many students receive college scholarships.

The evidence establishes that in the grouping situation there would be increased transportation problems. At least 1000 additional students will require transportation. Only 100 are presently being transported. Approximately $330,000 would be required in the first year to implement the grouping plan.

The grouping plan is rejected and the plan of the Board is adopted.

NO CROSS-BUSSING

Neither the Board's plan, as modified herein, nor the HEW plan involve "cross-bussing". As provided by Florida law, students living more than two miles from the school they attend are entitled to transportation.

PUPIL REASSIGNMENT

The Board plan is also to be amended to provide as follows:

1. Any pupil, with parental consent, shall have the right to transfer from a school at which his race is in the majority to attend a school at which his race is in the minority, regardless of the availability of space at the latter school, and the Board shall furnish free transportation provided the distance involved meets state transportation statutes.
2. All parents in the system are to be notified of this provision.

BI-RACIAL COMMITTEE

A Bi-Racial Committee composed of 12 members, six white and six black, will be appointed by the Court to review the operation of the majority to minority pupil transfer rule, the transportation system, selection of school sites, and such other special assignments as the Court may direct. The Committee is authorized to hold hearings and make recommendations to the Board in connection with these activities. The chairmanship shall alternate annually between a white chairman and a black chairman. Within ten days, the Board and CTA shall each submit to the Court two names and each of the intervenors one name of nominees for the Committee.

REPORT BY THE BOARD AND BI-RACIAL COMMITTEE

Within sixty days after the opening of the Fall term of the 1970-71 school year, the Board and Bi-Racial Committee are directed to file reports with the Court as to their findings and recommendations with respect to the operation of the plan as implemented by the Board.

MAYS JUNIOR HIGH SCHOOL EXPERIENCE

This suit was begun, as above recited, by Herbert Pate and others in the State Circuit Court. Its purpose was to enjoin the Board from assigning students for the school year 1969-70 to Mays Junior High School, a previously all-Black school, as part of its plan to desegregate Dade County Schools. With the approval of the Interim Desegregation Plan, such assignments were effectuated. The Court is now informed by means of the news media that integration at Mays has been successful. Accordingly, the Bi-Racial Committee shall, promptly following its appointment, study the practices and procedures utilized at that school and submit a report within thirty days to the Court, together with its recommendations for possible utilization of such practices and procedures by the Board at other integrated schools in the system.

CONCLUSION OF LAW

The plan submitted by the Board, as modified herein, and subject to the revisions to be accomplished as above directed, constitutes a unitary system of public education for the Dade County, Florida school district.

FINAL JUDGMENT

It is ORDERED AND ADJUDGED that:

1. The Board of Public Instruction of Dade County, Florida, and Edward L. Whigham, as Superintendent of Public Instruction, and his successors in office, are permanently enjoined from operating a dual system of public education segregated by race, and shall henceforth operate a unitary system as described above.

2. The transfer of students shall be made effective August 1, 1970 and thereafter.

3. The separate petitions of the several intervenors are hereby denied, except as the relief therein sought may be included in the over-all plans herein approved. The separate suits by Michael A. Frank (Case No. 69-1025-Civ-CA) and Joseph Pardo (Case No. 69-1041-Civ-CA) which were consolidated with this suit involve attacks upon administrative decisions by the Board. No constitutional issue is presented. Accordingly, the relief sought in both suits is denied and both suits are hereby dismissed with prejudice.

4. The Court retains jurisdiction of the cause and the parties for the purpose of insuring that the plan here adopted and the required amendments are carried out and the school system operated consistently with the requirements of the United States Constitution.

DONE AND ORDERED at Miami, Florida this 26th day of June, 1970.

/s/ C. Clyde Atkins,

United States District Judge

cc. George Bolles, Esq.
Tobias Simon, Esq.
Walters Moore & Costanzo
Howell Ferguson, Esq., Legal Services Program
Shutts & Bowen
Rivers Buford, Esq.
Hon. Earl Faircloth
Hon. Claude R. Kirk, Jr.

Hon. William C. Cramer
Alan H. Rosenson, Esq.
Paul B. Steinberg, Esq.
Aaron Foosaner, Esq.
Lane & Mitchell
James E. Glass, Esq.
James W. Matthews, Esq.
William A. Frieder, Esq.
Richard Y. Feder, Esq.
Wicker, Smith, et al.
Henry A. Edgar, Jr., Esq.
Robert R. Frank, Esq.
J. E. Ludick, Esq.
William Manker, Esq.
Daniel N. Heller, Esg.
Larry S. Stewart, Esq.
Hillery F. Silverman, Esq.
Ellis Rubin, Esq.
Robert M. Bader, Esq.

[TITLE OMITTED]

SUPPLEMENTAL ORDER APPROVING DESEGREGATION PLAN FOR DADE COUNTY PUBLIC SCHOOLS, AS MODIFIED, AND AMENDED FINAL JUDGMENT

The Court has requested the School Board to submit two reports so that the Court may be fully informed and there will be an adequate record for appellate review. These two reports were filed July 6, 1970 and July 20, 1970. After careful study and analysis of these reports, the Court is prepared to rule informatively.

Each school or group of schools which is the subject of a report will be discussed and ruled upon separately. The sequence of discussion will substantially follow the sequence of this Court's Order of June 26, 1970.

ELEMENTARY SCHOOLS

A. L. Lewis, N. K. Cooper, Florida City, West Homestead and Redondo Elementary Schools

The Court agrees that a rezoning of these five schools is impractical. The sole reason is that in an attempt to keep each school within its capacity (some of which are strictly limited) zone lines will have to be drawn in such a manner as to put two schools within one zone. Considering there is a more effective and reasonable plan available, rezoning is rejected.

The Lewis and Cooper Schools shall be paired. There are no problems with relative capacities and the safety factors in eliminating the boundary at Southwest 4th Street are minimal.

The Florida City and West Homestead Schools shall be paired by placing grades 1 and 2 at the Florida City School and grades 3 to 6 at the West Homestead School. The major objection of the School Board concerns capacities. However, in showing over-capacities, the School Board is using the designed capacity figures. By using the figures showing the capacities with the portables already on the site the over-capacity at the West Homestead School is reduced to 60 students. The School Board estimated membership figures show an enrollment of 40 students over capacity. The over-capacity at the Florida

City School is reduced to and under capacity of 20. In its July 6, 1970 report, the School Board states that over-capacities can best be handled at the West Homestead School. There are no serious safety factors.

F. C. Martin and Colonial Drive Elementary Schools

In pairing these two schools many factors are involved. If grades 1 to 3 were housed at the Martin School the capacities would be equalized. Pairing requires the Colonial Drive sixth grade to be moved to Richmond Heights Junior High School. The junior high school is presently on a ten-hour day which creates an over-capacity sufficient to house the Colonial Drive sixth grade. This has the advantage of desegregating the Martin sixth grade presently being housed at the junior high school.

As reasonable as this plan seems, the Court must reject it. The Colonial Drive School is a "pod type" school. Not only is a "pod type" school different in construction and design but the instructional and educational program is, of necessity, also unique. A "pod type" school cannot be used in a traditional manner. Pairing would not in itself destroy the apparent educational advantage of the "pod type" school. However, it is the opinion of the principal of the Colonial Drive School that the adjustment that must be made by the students in going from one type of school to the other type is much easier if made from "pod type" to traditional. With this educational consideration in mind it is necessary to house grades 1 to 3 at the Colonial Drive School. Pairing in this manner would necessitate the use of seven portables thus destroying the educational effectiveness of the "pod type" school.

Additionally, because of the geography of the two zones, 183 students will require transportation and the remaining students will be required to walk long distances through remote, undeveloped land.

Practically every communication the Court has received from concerned parents of the Colonial Drive School (which is presently integrated) has pleaded that the Martin School be paired with some other school in the area (Vineland, Coral Reef Drive, Miami Heights, Howard Drive, Richmond or South Miami Heights). Because the Martin School zone is isolated on the north side of the west end of Coral Reef Drive, the entire Martin School population would need to be transported to one of these schools.

The pairing of the Martin School with any other school is rejected.

Allapattah, Buena Vista and Santa Clara Elementary Schools

The pairing of the Allapattah and Buena Vista Schools is rejected because the Buena Vista School is to be involved in a grouping to be discussed below.

At the May 22, 1970 hearing the School Board presented no testimony as to the educational and administrative problems caused by the continuing influx of Spanish language origin students in the school system, arising because of more than 300,000 refugees having been admitted from Cuba as escapees from the Castro regime. Not until the July 6, 1970 response was the Court made aware of this problem. The Court made a

further request pertaining to this factor on July 10, 1970. The Court now has an adequate record to evaluate the significance of specially designed programs for Spanish language origin students (hereinafter referred to as Bilingual Education).

The Santa Clara School has a significant Bilingual Education program. In pairing it with the Allapattah School a duplication of the program would be required. In addition, the Santa Clara School is the site of the only southern component of the Southeastern Educational Laboratory Project. The Allapattah School does not have any special programs for the disadvantaged pupils. The Court considers the duplication of the Bilingual Education program and a disruption of the Southeastern Educational Laboratory Project total impediments to pairing these two schools.

It appears to the Court that in pairing a predominantly Black school with a predominantly White school with 75% Spanish language origin students, the two schools would be integrated only in total figures. Once inside the school building those who are involved in the Bilingual Educational program would proceed to one classroom while the remaining students would proceed to another classroom. Effective integration is thus aborted. In the case of these two schools, the remaining students would be about 90% Black.

With the addition of the traffic control equipment recommended by the Department of Traffic and Transportation the students could safely traverse Northwest 36th Street. However, it does not appear that the students could safely negotiate around the entrance and exit

ramps to the East-West Expressway at Northwest 12th Avenue. This creates a serious safety hazard.

A further serious problem is created by the lack of a sixth grade at the Allapattah School. If the Allapattah sixth grade were brought into the pairing, a severe overcapacity would be created. If the Santa Clara sixth grade were removed to the Allapattah Junior High School it would remain there only one year, returning to Lee Junior High School for seventh grade. There is no room at the Lee School to house the Santa Clara sixth grade.

Pairing is not educationally or administratively practical and, therefore, must be rejected.

Douglas and Riverside Elementary Schools

The pairing of these two schools involves the same considerations as those discussed above concerning the Santa Clara School. The Riverside School has a 97.5% Spanish language origin population. The July 20, 1970 report indicates that the expected additional 100 students have arrived at the Riverside School. In addition to the regular Bilingual Education programs the School Board expects to resume a special program to improve reading performance. The Douglas School has two programs for the disadvantaged pupils (PLAD and Head Start). Pairing requires duplication of the Bilingual Education program and either the loss of or duplication of the programs for the disadvantaged.

The duplication of special programs is a sufficient reason for not requiring the pairing of these two schools. However, there are additional reasons. Both schools are

presently substantially over capacity. Both schools are presently utilizing the maximum number of portables.

The relative capacities of the schools do not allow for a pairing without creating a severe over-capacity at at least one of the schools.

The most logical route of travel for the approximately 1700 pupils who would be required to cross the Miami River would be the Fifth Street Bridge. This bridge is an extremely hazardous crossing for pedestrians as four streets converge at that point from the south and three from the north. It is the focal point for much of the traffic in the downtown area. The adjacent and connecting streets are likewise hazardous.

Pairing would require transportation for 225 additional students.

For all of the above reasons the Court declines to pair these two schools.

Comstock and Kelsey Pharr Elementary Schools

The Comstock School has an 84% Spanish language origin pupil population which is expected to increase. The Kelsey Pharr School has two programs for the disadvantaged pupils (PLAD and Mobile Reading Center). The pairing of these two schools involves the same considerations as those discussed above concerning the Riverside and Douglas Schools. Pairing is, therefore, rejected.

Additionally, any pairing plan would leave the Kelsey Pharr School at an under-capacity while the Comstock School would be over-capacity even if it were to utilize the maximum number of portables allowable.

Dunbar, Wheatley, Buena Vista, Miramar, Santa Clara, West Dunbar and Douglas Elementary Schools

The Court's order of June 26, 1970 approved the HEW grouping plan but felt that it was to be considered only as a minimum. That same order directed the School Board to show why they could not involve five schools in a single plan. That report submitted July 6, 1970, totally failed in responding to the inquiry of the Court. By Order dated July 10, 1970 the Court again requested information. The report filed July 20, 1970 adequately responds to the inquiry but fails to show good cause.

It was not until the July 6, 1970 report that the School Board raised the problem with the Bilingual Education program. At the May 22, 1970 hearing the sole objection to the HEW grouping plan was that it destroys the neighborhood school concept. The Court must presume that in dealing with a group of schools where similar programs exist at several of the schools there is some sort of economy of scale involved making it less impractical to pair or group.

The Court has rejected the two pairing plans involving the Santa Clara and Douglas Schools. Therefore, in a relatively compact area there are three predominantly Black schools (Dunbar, Wheatley and Douglas) and four predominantly White schools with substantial Bilingual Education programs. All of the schools have a PLAD pro-

gram except the Santa Clara and West Dunbar Schools. The Head Start programs, which only involve five-year olds, exist at the Miramar, Dunbar, West Dunbar and Douglas Schools. The total capacity of all seven schools is 7,020 students. The total expected enrollment for all seven schools is 6,820 students.

The Court feels that by utilizing a series of pairing plans, a series of grouping plans or a total rezoning of the area that all three of these predominantly Black schools can be desegregated without a significant sacrifice in the special programs. The Court is aware that this entire area is a business and commercial district but feels certain that with the assistance of the Department of Traffic and Transportation any possible safety hazards that may exist will be eliminated.

The School Board is directed to use its peculiar expertise in these matters to design a plan for these schools which effectively desegregates the three predominantly Black schools. The Court feels that a predominantly Black school is desegregated when less than 85% of its enrollment is composed of Black students. There are 3,761 Black students enrolled in these seven schools which is approximately 55% of the total enrollment. The School Board is under no direction to create a 55-45 ratio in each of the seven schools but it should be a factor to consider.

Carver, Sunset and Coral Gables Elementary Schools

The Court's Order of June 26, 1970 requested the School Board to submit a report showing how these three schools could be rezoned without creating over

capacities. Again, the report filed by the School Board on July 6, 1970 is unresponsive. The Court does recognize and fully accepts the representation of the School Board that a conversion to a modified school day should be the last resort. In returning 100 students from the Coral Gables School to the Carver School and 100 students from the Carver School to the Sunset School those closest to the Carver School will be the students who will be affected. The students surrounding the Carver School are predominantly Black. The resulting percentages of Black students at the three schools would be approximately as follows: Coral Gables - 40%; Carver - 58%; and Sunset - 8%. The Court does not consider this to be undesirable.

The HEW rezoning plan does present some safety hazards in requiring students to cross South Dixie Highway, LeJeune Road, Bird Road and Ponce de Leon Boulevard. However, with the existing traffic control devices and those that might be recommended by the Department of Traffic and Transportation these hazards are minimal.

The Carver and Coral Gables Schools could be desegregated by a pairing plan but this would require approximately twice the number of students to cross these same streets. Pairing would not substantially change the racial composition of the two schools from that of the HEW plan as modified by the Court. The Court does not reject a pairing plan rather it leaves it to the discretion of the School Board.

The Court notes that Exhibit 2 to the July 22, 1970 report indicates that 122 students have been transferred from the Carver School to the Tucker School. These students are obviously the fifth and sixth grade students

who live in the Tucker attendance zone. Since all of the 122 are Black students, the percentage of Black students at the Carver School under the HEW plan as modified by the Court or under a pairing plan would be greatly reduced. The Court is unable to assess precisely the significance of this transfer.

The Court approves the HEW rezoning plan with appropriate modifications to relieve the over capacity at the Coral Gables School. The School Broad is directed to implement either a rezoning plan or a pairing plan. It is possible that a "domino effect" may be created. The Court is without the expertise to assess exactly how other attendance zones will be affected. This knowledge is peculiarly within the expertise of the School Board. The Court does find that a "domino effect" is not an impediment to implementation of the rezoning plan.

The zones which might be affected are those of the Sunset, Tucker, Dade and Coconut Grove Schools. In changing any of these zone lines the School Board is directed to promote as far as possible the creation of substantially equivalent racial ratios in each school. This is not an absolute directive, rather it is intended to insert another consideration which may have been overlooked in the past.

Dade and Tucker Elementary Schools

The Court has found immediately above that the safety hazards involved in a rezoning of the Carver and Coral Gables Schools were minimal. The two zones involved here are immediately east of the rezoned area. However, the safety hazards are substantially greater in

this area. The most logical crossing points for South Dixie Highway (Bird Road and Douglas Road) are extremely congested intersections. Approximately 640 students would be required to negotiate these crossings. Once across South Dixie Highway the majority of students would walk up or down Douglas Road. The north side of Douglas Road has sidewalks. However, the south side has none. Students would be forced to walk eight to ten blocks on the shoulder of a very busy street. This section of Douglas Road is lined with business establishments and high density apartment buildings. The photographs attached to Exhibit 20 of the July 20, 1970 report demonstrate the nature of the safety hazard caused by the construction of a new sewer system in this area. This is a serious impediment to pairing these two schools.

Additionally, the Dade School has a 68% Spanish language origin pupil population requiring a Bilingual Education program. The Tucker School has two programs for the under-privileged pupil (PLAD and Head Start). Thus the same problems of duplication exist as discussed above in the pairing of the Santa Clara and Allapattah Schools.

The School Board attributes a great deal of educational significance to the difference between a graded and an ungraded curriculum. The primary emphasis is upon the difficulty of the students to adjust in converting from one program to the other. The Court presumes that this problem will be overcome in the first year. However, since both schools will need to be on a graded program a decided educational advantage will be lost to those students who now attend, or would attend, the Dade School. This is a significant consideration.

The Court must reject the HEW pairing plan.

Arcola Lake and Van E. Blanton Elementary Schools

The relative capacities of these two schools are conducive to pairing. However, approximately 400 additional students would require transportation. Without the construction of a bridge at Northwest 12th Avenue at an estimated cost of $13,000 and a 120-day delay, those students who would be required to walk would have to cross the Little River Canal at either the extreme east end or the extreme west end of the attendance zone. Those students crossing at the westerly end would travel through residential zones. Those students crossing at the easterly end would be required either to travel along Northwest 7th Avenue or take a substantially longer and less direct route through the residential areas. The danger to the students presented by crossing at either of the two bridges and the danger of walking many blocks up heavily travelled Northwest 7th Avenue or over busy Northwest 95th Street is substantial. Even if a bridge were constructed, those students who would use it would be required to walk many blocks north and south along Northwest 12th Avenue and to cross Northwest 95th Street twice a day. The distances and the dangers related thereto make it unsafe to require the pairing of these two schools at this time. By separate order the Court will instruct the Bi-racial Committee to make a further investigation of the possibility of pairing these schools.

The Court also is concerned that by pairing the "pod type" Arcola Lake School with the traditional Blanton School that a great deal of the educational superiority of the "pod type" school will be lost. The capacity problem that exists in the pairing of the Colonial Drive and Martin Schools is not present here but the

students will be required to make the adjustment which does have significant educational implications.

Holmes Complex, Little River and Edison Elementary Schools

The Little River School has a significant enrollment of Spanish language origin pupils as well as a Head Start program, as well as the only Follow Through Program in the school system. The Holmes Complex School has four programs for the disadvantaged pupils (PLAD, Mobile Reading Center, Talent Development and Head Start). Since the Head Start programs work with five-year-olds this factor is discounted but is still a consideration. The duplication of efforts involved here, considering that the Edison Park School has no special programs, makes grouping of these schools educationally and administratively impractical.

The relative capacities of the schools also make grouping impossible. All of the schools are presently over capacity. The Edison Park School which houses only five grades has no space for portables. The Holmes Complex School has room for only five portables which appear to be needed to house the over-capacity of 135 students. If the Edison Park sixth grade were returned to the grouping, the over-capacities would be even greater. The expected enrollments cannot be split between these schools in any other fashion.

Likewise it is impossible to pair the Holmes Complex School with the Little River School. By splitting the grades 1 to 3 and 4 to 6, the Little River School would require five portables to house the over-capacity. By

splitting the grades 1 to 4 and 5 to 6 the Holmes Complex School would exceed its maximum capacity using portables. It should be noted that the Little River School is specially designed as a feeder school for Miami Edison Middle School.

Although the three schools are rather closely grouped and the Department of Traffic and Transportation could create safe crossings of the major streets in the area, the Court feels a concern for safety simply because of the sheer numbers of students which will be required to walk to school.

Lorah Park, Gladeview, Hialeah and Curtiss Elementary Schools

The existence of the Seaboard Coastline Railroad tracks and the surrounding industrial and commercial area is a total impediment to either pairing, grouping, or rezoning these schools. There are three available east-west streets which cross this area, none of which could be made reasonably safe because of the nature of the traffic in the area. Since the schools are substantial distances apart, all walking students will be required to walk much greater distances of up to two miles. Pairing or rezoning would require transportation for an additional 475 to 525 students.

The capacities of the schools would permit a pairing of the Hialeah and Lorah Park Schools but the pairing of the Hialeah and Gladeview Schools is foreclosed.

The Lorah Park School has two programs for the disadvantaged pupils (PLAD and Head Start) while the Gladeview School has three (PLAD, Mobile Reading Center and Head Start). The Hialeah School has a Bilingual Education program for its 60% Spanish language origin students and while the Curtiss School does not as yet have a Bilingual Education program, it is expected that it will soon require one as the percentage of Spanish language origin students increases above 44%. As discussed above, a pairing or rezoning plan would require a duplication or loss of all these programs thus constituting a further impediment to desegregating these schools.

JUNIOR HIGH SCHOOLS

B. T. Washington, Citrus Grove and Ada Merritt Junior High Schools

The Court reluctantly but emphatically finds that the grouping of these schools is impossible under every consideration.

The Merritt School is expected to be at least 200 students over capacity and there is no room for portables. The Citrus Grove School is expected to be at least 50 students over capacity even though it is utilizing a 10-hour day schedule and there is no room for portables. Considering the limited capacities of these schools it is impossible to house an entire grade level of students from all three schools at either of these two schools.

If the Merritt and Washington Schools were paired an even greater over-capacity would be created at the

Merritt School while a substantial under capacity would be created at the Washington School. In a like manner, by housing the combined eighth and ninth grades at the Washington School, the Citrus Grove and Washington Schools could be paired. However, Citrus Grove has capacity for the combined seventh grades only if it remains on the 10-hour day. This is totally impractical, particularly when the size and location of the two zones is considered.

In addition to the 10-hour day at the Citrus Grove School there is a Bilingual Education program for the schools' predominantly Spanish language origin population. The Merritt School is in an identical situation. The Washington School is specially designed both educationally and in physical plant to provide an experimental pilot and research program for disadvantaged youth, all of whom are Black. Any pairing, grouping or rezoning plan would effectively disrupt these special education programs. The Court notes that both the Washington and Merritt Junior High Schools have two programs in common for the disadvantaged pupil (Curriculum Guidance Project and Neighborhood Youth Corps).

Because these three schools have a high concentration of pupils immediately surrounding the school there are only two bridges that could be used to cross the Miami River, (Northwest 12th Avenue and Northwest 5th Street), because most walking students will take the most direct route. There are well over 4500 students in these three attendance zones. If the schools are grouped, approximately one-third will require transportation. Approximately the same number would be required to cross the Miami River. As discussed above in connection with

the Riverside School, the Northwest 5th Street Bridge is a seriously dangerous bridge. The safety hazards involved in the number of students crossing the Miami River twice a day is substantial.

The Court finds that there is no practical method by which these schools can be desegregated.

Allapattah, R. E. Lee Junior High Schools and Miami Edison Middle School

The grouping of these three schools is foreclosed by the capacities. The Miami Edison Middle School is, as its name implies, a true middle school which means that the educational program is uniquely designed for a specific purpose. All of the elementary feeder schools have educational programs specially designed to prepare the students for the middle school. A middle school houses only grades 6 to 8. The Court feels that the middle school concept should be kept intact. The Allapattah Junior High School houses the sixth grade from the Allapattah Elementary School. The Lee Junior High School is a traditional school with grades seven through nine. With two sixth grades, three seventh grades, three eighth grades, and two ninth grades, the only way to group these schools is to house the two sixth grades with the two ninth grades. The Lee Junior High School has no space for additional portables. The Miami Edison Middle School has space for only four additional portables. The Allapattah Junior High School has space for many additional portables. Although space could be made available at the Allapattah Junior High School there is not sufficient space either to bring in the 453 students in the ninth grade at the Miami Edison Senior High School or to drop

out the sixth grades at the Miami Edison Middle and Allapattah Junior High Schools.

Grouping creates a rambling zone which would require almost every student to cross one of three heavily travelled streets (Northwest 7th Avenue, Northwest 36th Street and Northwest 54th Street) and traverse one of two heavily used North-South Expressway interchanges (Northwest 36th Street and Northwest 54th Street). With approximately 1000 students walking through this area each day a safety hazard is created.

The Lee Junior High School has a 58% Spanish language origin population requiring a substantial Bilingual Education program. Grouping would require a three-way duplication of programs. This is unreasonable.

The School Board has not submitted figures estimating the number of additional students who will require transportation. Considering the rambling zone created within a grouping plan, it is obvious that extensive transportation will be required.

The pairing of the Lee Junior High and Allapattah Junior High Schools is also impractical because there is no place to put the Allapattah sixth grade.

The three schools could be rezoned only by severely gerrymandering the zone lines so that each school would have a similar ratio of white to black students. Of all the seventh, eighth and ninth grade students in the combined attendance zone (including the ninth grade at the Miami Edison Senior High School), approximately 60% are Black students. Simply stated, a rezoning would require

the majority of students to cross the same streets in the same manner as discussed above. Rezoning would probably require even more additional transportation than under a grouping plan.

The Court finds that there is no practical method by which the Allapattah Junior High School can be desegregated.

Brownsville and Miami Springs Junior High Schools

The capacities of these two schools effectively prevent their pairing. The Miami Springs Junior High School houses only seventh and eighth grades while the Brownsville Junior High School has the traditional three grades. If the 705 ninth grade students now being housed at the Miami Springs Senior High School were brought back into the pairing, the two schools would be over capacity by 710 students. The only way these two schools could be paired within their capacities is to put the combined seventh grade at the Brownsville Junior High School and the combined eighth grades and the one ninth grade at the Miami Springs Junior High School. This results in most students spending only one year at each of two schools before going to a third school. This would completely disrupt the traditional concept of a junior high school and is totally unreasonable.

Under either a pairing or rezoning plan approximately 600 additional students would require transportation. Those not being transported would be required to cross the same industrial zone surrounding the Seaboard Coastline Railroad tracks that has been found above to present a serious safety hazard. The northern extension

of the Miami River does not present a serious safety hazard because many of the Miami Springs Junior High School students are presently crossing it safely.

Additionally there exists the recurring problem of a Bilingual Education program at one school and a program for the disadvantaged pupils at the other school. Both schools have the Neighborhood Youth Corps program. The Brownsville Junior High School has a Work-Experience Program which, for obvious proximity reasons, can function effectively only in the Brownsville Community. This program is, itself, a sufficient impediment to pairing or rezoning.

There is no practical method by which the Brownsville Junior High School can be desegregated.

In addition to the above, the Court's Order dated July 10, 1970 requested information concerning safety factors at schools which the Court ordered paired or grouped in its Order dated June 26, 1970. The School Board has responded in relation to two recommendations made by the HEW plan and adopted by the Court.

With the addition of the traffic control devices recommended by the Department of Traffic and Transportation the Court finds that the safety hazards in pairing the Rainbow Park and Opa Locka Elementary Schools are not substantial.

In regard to the grouping of the Moton, Perrine and Bel-Aire Elementary Schools the Court remains concerned about the safety hazards that exist in 665 students crossing one of the most heavily travelled thoroughfares in Dade

County (U. S. Highway #1). However, with the addition of the traffic control devices recommended by the Department of Traffic and Transportation and the coordinated efforts of other appropriate governmental agencies the safety hazards will not be substantial. Accordingly, the School Board's alternative request for a rehearing is denied.

The School Board failed to submit information on safety factors concerning the HEW grouping plan rejected by the Court for the Bunche Park, Parkview and Scott Lake Schools. In reviewing the statistics on capacity the Court finds that the HEW grouping plan is feasible. Using the HEW plan as submitted 850 students would attend the Scott Lake School. However, the most recent statistics show that this would create an overcapacity of only 40 students. The School Board itself intends to house 850 students there in the Fall.

In the alternative, the School Board could house the fifth and sixth grades at the Bunche Park School. This would necessitate splitting the Black students who reside in the Bunche Park attendance zone between the remaining two schools, according to their capacities. It appears that this plan might necessitate additional transportation and increased walking distances.

The safety factors appear to be minimal. Therefore, the Court directs the School Board to implement either the HEW grouping plan or, in its discretion, some more desirable alternative.

No information was submitted on safety factors concerning the rejected HEW plan of pairing the Young and Westview Schools. The Court, however, reaffirms its prior

finding that since there is but one crossing for Opa Locka Boulevard, an arterial thoroughfare, there is a substantial safety factor presented. Also the Court remains hopeful that the majority-minority transfer policy adopted below will encourage many white students in the Opa Locka School zone to transfer to the Young School which has available capacity.

The Court has reconsidered, on its own initiative, the safety factors involved in the modifications of the School Board plan already adopted and remains of the opinion that they are not substantial. It is presumed that the School Board will seek to enlist the coordinated efforts of all affected governmental agencies to further minimize the safety factors.

The School Board has requested that the Florida High School Athletic Association be impleaded in this lawsuit for the purpose of determining whether students who take advantage of the Majority-Minority transfer policy will become ineligible for athletic purposes. The issue has not as yet arisen and may not. Therefore, without indicating any disposition on the merits, the request is denied. At the time, if at all, a serious problem does arise the School Board will be allowed to take appropriate legal measures.

So that there will be no confusion, the Court wishes to point out to all parties and intervenors that the Fifth Circuit has limited the appeal time in school desegregation cases. The following is the pertinent quotation from *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211, 1222 (5th Cir. 1969):

> "In the event of an appeal or appeals to this court from an order entered as aforesaid in the district courts, such appeal shall be on the original record and the parties are encouraged to

appeal on an agreed statement as is provided for in Rule 10(d), Federal Rules of Appellate Procedure (FRAP). Pursuant to Rule 2, FRAP, the provisions of Rule 4(a) as to the time for filing notice of appeal are suspended and it is ordered that any notice of appeal be filed within fifteen days of the date of entry of the order appealed from and notices of cross-appeal within five days thereafter. The provisions of Rule 11 are suspended and it is ordered that the record be transmitted to this court within fifteen days after filing of the notice of appeal. The provisions of Rule 31 are suspended to the extent that the brief of the appellant shall be filed within fifteen days after the date on which the record is filed and the brief of the appellee shall be filed within ten days after the date on which the brief of appellant is filed. No reply brief shall be filed except upon order of the court. The times set herein may be enlarged by the court upon good cause shown."

Amendment of the Majority to Minority Transfer policy as proposed by the Board in its Reply filed July 6, 1970, is hereby approved.

AMENDED FINAL JUDGMENT

Except as herein modified, the Memorandum Opinion and Final Judgment entered June 26, 1970 are in all respects ratified and affirmed.

DONE AND ORDERED at Miami, Florida this 24th day of July, 1970.

/s/ C. Clyde Atkins

United States District Judge

	Board's Plan	District Court's Opinions	This Court's Modifications
Number of schools left all- or virtually all-Negro under —			
Elementary	30	18	10
Junior High	4	4	1
Senior High	2	1	1
	36	23	12
Number of Negro students attending all- or virtually all-Negro schools under —			
Elementary	23,403	16,519	9,404
Junior High	6,116	6,116	1,550
Senior High	5,153	2,960	2,960
	37,672	25,595	13,914
Percentage of Negroes attending all- or virtually all-Negro schools	64%	44%	24%

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NOS. 29039 and 29179

HERBERT PATE, et al.,
Plaintiffs

vs.

DADE COUNTY SCHOOL BOARD, et al.,
Defendants-Appellees

vs.

CORAL REEF CIVIC ASSOCIATION, INC., et al.,
Intervenors-Appellants

HERBERT PATE, et al.,
Plaintiffs-Appellees

vs.

DADE COUNTY SCHOOL BOARD, et al.,
Defendants-Appellees-Cross Appellants

vs.

ALICE LOVE, CARSWELL WASHINGTON, et al.,
Intervenors-Appellants-Cross Appellees

Appeals from the United States District Court
for the Southern District of Florida

(June 5, 1970)

Before BROWN, Chief Judge, MORGAN and INGRAHAM, Circuit Judges.

BY THE COURT:

It appearing to this court that the District Court for the Southern District of Florida held additional hearings on May 22, 1970, on the adoption of a plan to establish a unitary school system in Dade County, Florida. It is HEREBY ORDERED the above-named appeals be remanded to the District Court for the Southern District of Florida pending the approval by said district court of any new orders or plans, and IT IS FURTHER ORDERED that any new plans, together with any Findings of Fact and Conclusions of Law thereon, shall be filed with this court within 20 days from the date hereof. Jurisdiction of these appeals is retained in this court during the limited remand for the purposes above stated.

REMANDED for further proceedings consistent herewith.

[TITLE OMITTED]

ORDER APPOINTING BI-RACIAL COMMITTEE

The following are hereby appointed as a Bi-Racial Committee in this cause for the purposes hereinafter recited:

Member	Business Address and Phone	Home Address and Phone
NEAL ADAMS	4825 N. W. 27th Avenue, Miami, Florida 634-4965	2956 N. W. 48 St. Miami, Florida 634-6679
DR. ROBERT M. ALLEN	Division of Continuing Education University of Miami Coral Gables, Florida	6510 S. W. 65 St. South Miami, Fla. 661-6316
CARLOS J. ARBOLEYA	Fidelity National Bank of South Miami 5880 Bird Road South Miami, Florida	1941 S. W. 23rd St. Miami, Fla. 446-0730
REV. JOHN A. FERGUSON	Second Baptist Church 11111 Pinkston Drive Miami, Florida 233-4154	11525 S. W. 136 Ter. Miami, Florida 238-5672
MRS. CHARLES A. FINKELSTEIN		815 Catalonia Ave. Coral Gables, Fla. 443-5433
MRS. THEODORE GIBSON		3401 William Ave. Miami, Florida 445-2224
FRANK J. MAGRATH	National Conference of Christians & Jews 409 Dupont Plaza Center, Miami, Florida 373-7658	7730 S. W. 134th St. Miami, Fla. 235-1216
MRS. CARRIE P. MEEK	Office of Community Services Miami Dade Junior College 11380 N. W. 27th Ave. Miami, Florida 33167 685-4441	6830 N. W. 28th Ave. Miami, Fla. 696-9238
MRS. STANLEY F. MILLEDGE	Channel 7 1401 N. Bay Causeway N. Bay Village, Fla. 751-6692	3535 Hiawatha Ave. Miami, Florida 448-0278
A. D. MOORE	c/o Model Cities 6207 N. W. 127th Ave. 691-0120	549 N. W. 50th St. Miami, Fla. 758-2893
ROBERT H. SIMMS	Community Relations Board 1105 Courthouse, Miami, Florida 377-5241	4125 N. W. 10th Ave. Miami, Florida 759-6143
EDWIN W. TUCKER	Office of Community Service 6180 N. E. 4th Court Miami, Florida 757-6241	10650 N. E. 10th Ct. Miami Shores, Fla. 757-6968

This Committee shall have the responsibility (1) to recommend to the Dade County School Board and the Court ways to maintain a unitary system, (2) to review the operation of the majority to minority transfer rule and the transportation system, (3) to assist the Dade County School Board in presenting to the Court any problem encountered by the Board in the operation of its desegregation plan heretofore or hereafter modified and approved by this Court or the Court of Appeals for the Fifth Circuit, (4) to consider the selection of school sites, and such other special assignments as the Court may direct. The Committee is authorized to hold hearings and make recommendations to the School Board and the Court in connection with these activities. The chairmanship shall alternate annually between a white chairman and a black chairman. Dr. Robert Allen is appointed interim chairman with the duty to see that a meeting and election of a chairman takes place within 10 days.

The following special assignments are given to the Committee:

Wihin sixty days after opening of the Fall term of the 1970-71 school year, the Committee is directed to file a report with the Court and the School Board as to (1) its findings and recommendations with respect to the over-all operation of the Desegregation Plan, as implemented by the Board; (2) the practices and procedures utilized at Mays Junior High School, in effecting the integration of that facility during the 1969-70 school term, for possible utilization thereof by the Board at other integrated schools in the system; and (3) the possibility of pairing Arcola Lake and Van E. Blanton Elementary Schools and to determine whether such pairing, in its

opinion, is economically, educationally and administratively sound.

ENTERED at Miami, Florida this 10th day of August, 1970.

C. CLYDE ATKINS

United States District Judge

cc. All Counsel of Record
All Members of the Committee

A PLAN FOR DESEGREGATION OF THE DADE COUNTY PUBLIC SCHOOLS

1970 - 1971

The Dade County School Board recognizes its affirmative responsibility to provide a desegregated, unitary and non-racial school system within which no person is to be effectively excluded from any school because of race or color, and it recognizes its responsibility to assign teachers without regard to race so that the schools throughout the system are not racially identifiable by their faculties.

THEREFORE the following plan for desegregation is presented:

I. STUDENT ASSIGNMENT

A. ATTENDANCE — The Board has adopted color-blind residential zones of attendance for each of the school centers in Dade County and has eliminated all dual or optional attendance zones. Under this attendance zone

policy, each student must attend the school serving his attendance zone, absent compelling, non-racial reasons for transfer.

B. PAIRING OF SCHOOLS — The Board has recommended pairing for the following schools:

TO BE PAIRED

Ponce de Leon Junior High School and *George Washington Carver Junior High School*, the 8th and 9th grades to attend Ponce de Leon, the 7th grade to attend Carver. These schools are located less than-two miles apart.

PAIRED NOW

J.R.E. Lee Elementary School and *Ludlam Elementary School.* The plan calls for kindergarten and grades 5 and 6 at Lee, and kindergarten and grades 1 through 4 at Ludlam. These elementary schools are located less than two miles apart. Commencing in September, 1970, J.R.E. Lee is to be converted to a special center and desegregated.

C. PHASE-OUT OF FACILITIES — The Board has phased out the following schools: Mays Senior High School, George Washington Carver, Booker T. Washington and North Dade. All of these buildings were reused for other purposes and are desegregated.

D. MAJORITY TO MINORITY TRANSFER — In addition to the above, the Dade County School Board has adopted a majority to minority transfer policy.

The attendance zones are attached hereto as Appendix A.

As a result of the steps taken by the School Board, the following will result:

It is estimated that of the 250,000 students expected to enroll in Dade County schools in September 1970, there will be 60,000 black and 190,000 white; that in excess of 36,000 black students will be involved in bi-racial or integrated situations; that approximately 116,500 white students will be involved in bi-racial or integrated situations. There will remain 21 schools which will be all black, or more than 95% black. There will be approximately 51 schools which will be all white, or in excess of 95% white; and there will be 147 regular schools which will be desegregated. In addition, there will be 8 special schools which are special schools serving the entire county for exceptional children, which will be desegregated, making a total of 155 schools of 227 which will be desegregated, or approximately 70%.

II. FACULTY AND STAFF ASSIGNMENTS

1. To achieve an equitable distribution of black administrators assigned to schools from among the administrative staff available, the number to be assigned to any school will be determined by the following guidelines:

a. Not more than one black administrator in any elementary school.

b. Not more than two black administrators in any junior or senior high school.

Future appointments of administrative personnel in schools will be made in accordance with policies and regulations of the School Board.

2. At least one black staff member will be assigned to counselling duties at each junior and senior high school.

3. The staffs of elementary schools will be reorganized so that in each elementary school the proportion of black and white teachers will approximate the 24% black — 76% white ratio existing among all elementary teachers in the school system.

4. The staffs of junior high schools will be reorganized so that in each junior high school the proportion of black and white teachers will approximate the 21% black — 79% white ratio existing among all junior high teachers in the school system.

5. The staffs of senior high schools will be reorganized so that in each senior high school the proportion of black and white teachers will aproximate the 12.2% black — 87.8% white ratio existing among all senior high teachers in the school system.

6. Teacher aides serving general instructional programs at the elementary and secondary school levels will be reassigned to achieve an approximation of equal racial distribution of aides in each school, with the reservation that Cuban aides, senior citizens aides, and others serving special programs will not be shifted to schools not having programs which require the use of such specialized aides.

7. A procedure based on seniority for transfer of teachers among schools to secure the required racial balance will be established by the school system. Voluntary requests from teachers seeking to be reassigned will be honored when possible.

Staff members required to be transferred under this desegregation plan will be directed to accept the new assignments as a condition of continued employment, in accordance with the December 10, 1969 order of the Court.

8. Teachers who have been notified they may not be reemployed in 1970-71, teachers on annual contract for the third year and beyond who will be continued on annual contract in 1970-71 and teachers who will be continued on annual contract in 1970-71 and teachers retiring at the end of the 1969-70 school year will not be transferred under this plan. Also annual contract teachers in their first year of teaching in Dade County who have not had prior teaching experience will not be transferred involuntarily under this plan.

9. School centers established to serve special educational purposes will not be included in the staff reorganization plan in accordance with the report of the Florida School Desegregation Consulting Center (Appendix D) indicating that the level of staff desegregation in those centers is satisfactory. The Pre-School Migrant Centers will be added to the list. Staff members assigned to the special teacher education project known as the Triple-T Program, operated in cooperation with the University of Miami, will not be transferred until completion of the project.

10. To effect to extensive reorganization of school staffs required by this plan and to provide for an intensive period of inservice education as recommended by the School Desegregation Consulting Center, schools will be closed for pupils for a four-day period (in addition to a teacher's work day already scheduled in the school system calendar).

11. As recommended by the Florida School Desegregation Consulting Center, the inservice education programs attached to this plan as Appendix C will be offered during the period of final school desegregation to the extent that financing can be provided.

Implementation of the inservice program calls for the release of approximately twenty well qualified black teachers to provide staff support services to teachers transferred to new schools. This reduction in black teachers available for transfer to predominatly white schools will be made up by appointments to vacancies in those schools as qualified black teachers become available. The black teachers assigned to staff support responsibilities during the desegregation period will be returned to classroom assignments in appropriate positions when the special staff support program is completed.

12. In the future, the school system will continue to include in its programmed recruitment of new staff members efforts to secure the services of additional black staff; however, reorganization of staffs during the 1969-70 school year in each school to achieve the racial ratio cited above for elementary, junior high, and senior high schools will constitute the basis of final elimination of the dual school structure in regard to staffing.

Appendix B contains a listing by schools of the number of staff members to be transferred under this plan. (Appendix B attached to teacher desegregation plan and labeled Appendix A).

Since the school system budget for the 1969-70 fiscal year cannot provide funds for inservice education on the

scale indicated in the inservice component (see Appendix C, Appendix B in staff desegregation plan) of this staff desegregation plan, the school system will seek funds from the federal government to finance the additional inservice activities.

III. CONSTRUCTION AND SITE ACQUISITION

The Board has long prior to the adoption of this plan had a policy by which new school sites are acquired and construction of new buildings in the school system is accomplished only after study of a special staff committee to determine whether or not said new site or new building construction tends to hamper the continued progress of desegregation in the Dade County Schools.

It is believed that the Dade County schools are in compliance with the constitutional requirements with regard to construction and site acquisition.

IV. TRANSPORTATION

For a long period of time prior to the adoption of this plan, the Board has had a policy of transportation of school children based upon economy, efficiency, and totally devoid of racial discrimination for the transporting of children to the Dade County schools. The Dade County schools will continue this policy in the future.

It is believed that the Dade County schools are in complaince with the constitutional requirements with regard to transportation.

V. EXTRA-CURRICULAR ACTIVITIES AND SPORTS

Dade County schools have had in effect for several years policies by which there is to be no discrimination as to students participating in extra-curricular activities such as band, cheer leaders, marching groups, school interest clubs, as well as sports, so that no student is effectively barred from participation in any of these activities because of race or color.

DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202
May 15, 1970

Honorable C. Clyde Atkins
United States District Court
Southern District of Florida
Miami Division
Miami, Florida

Re: Dade County Public Schools

Dear Sir:

Pursuant to the Order of the Court, we are delivering herewith forty (40) copies of the plan of desegregation formulated and recommended by the U. S. Office of Education, Department of Health, Education and Welfare.

Sincerely,

/s/ Ernest E. Bunch
for: Jerry Brader, Director
Division of Equal Educational
Opportunities
U. S. Office of Education

Encl. (40)

DESEGREGATION REPORT
DADE COUNTY SCHOOLS

May 15, 1970

The following is the report to the United States District Court for the Southern District of Florida, Miami, Division, concerning the Dade County Public Schools' plan for school desegregation, pursuant to the order of the Court. This report has been prepared by the Division of Equal Educational Opportunities, Office of Education, United States Department of Health, Education, and Welfare.

Throughout the preparation of the report, the Dade schools which were considered "target" schools for study were those whose black student populations exceeded 85 per cent. It should be understood that this was not intended to imply a definitive description of what might be considered an effectively desegregated school. It provided the guidelines, however, for in-depth studies of these schools.

The report is organized into six sections, each section dealing with one of the six administrative sub-districts of the school system.

SOUTH DISTRICT

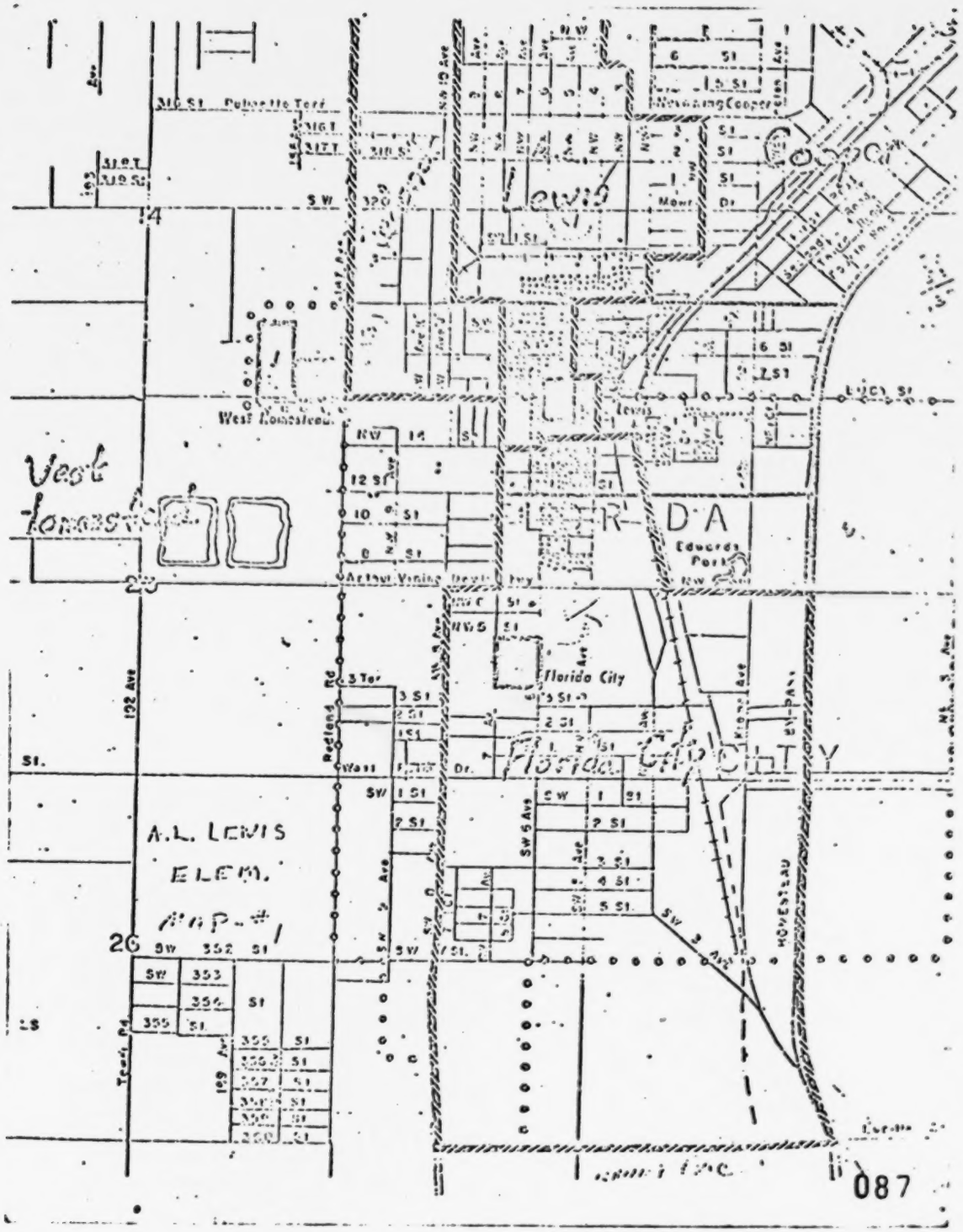
Elementary Schools

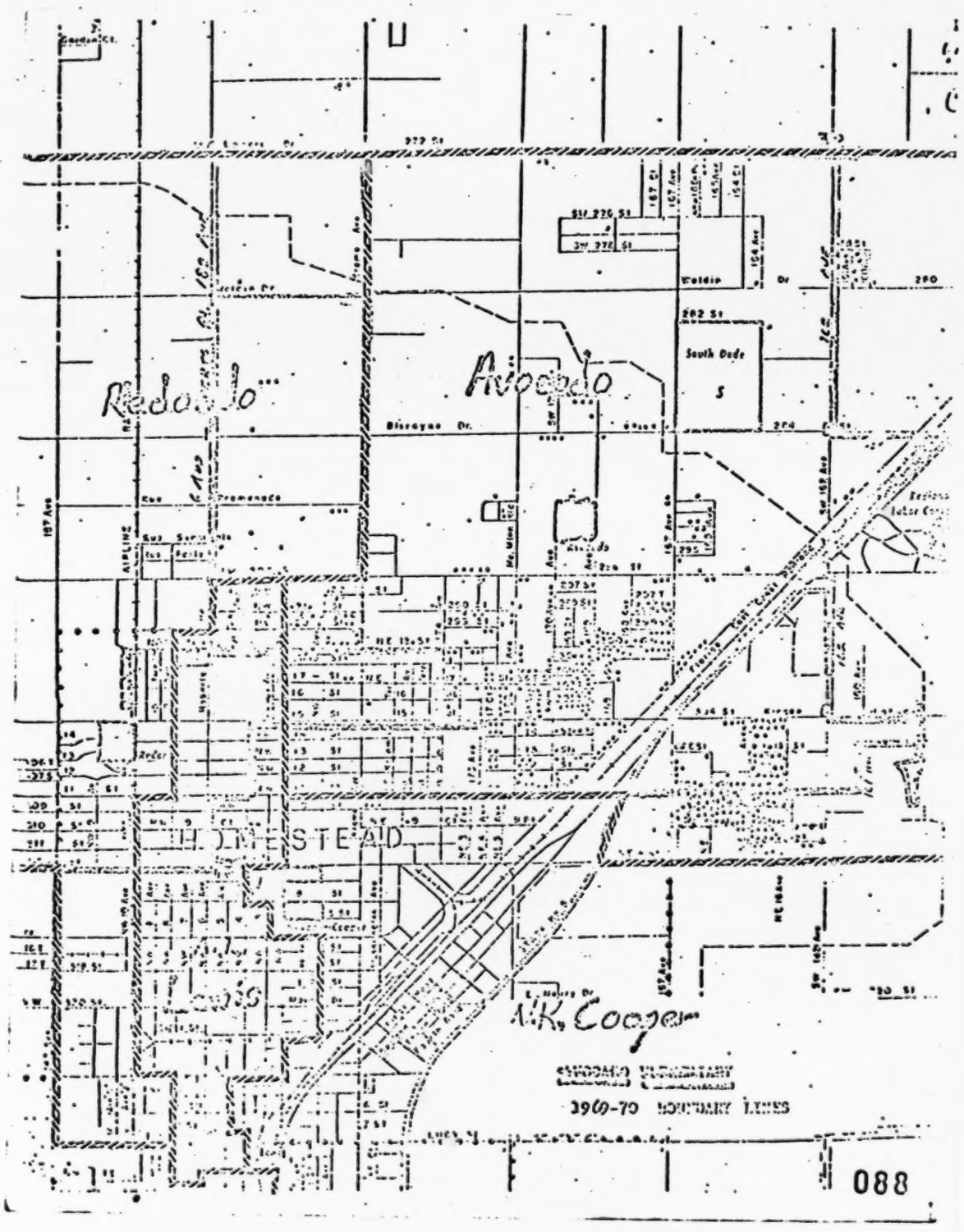
According to the Dade County plan it is estimated that there would be four elementary schools in the South District enrolling more than 85 per cent black student bodies: A. L. Lewis, R. R. Moton, Pine Villa, and West Homestead. They are considered in three groups.

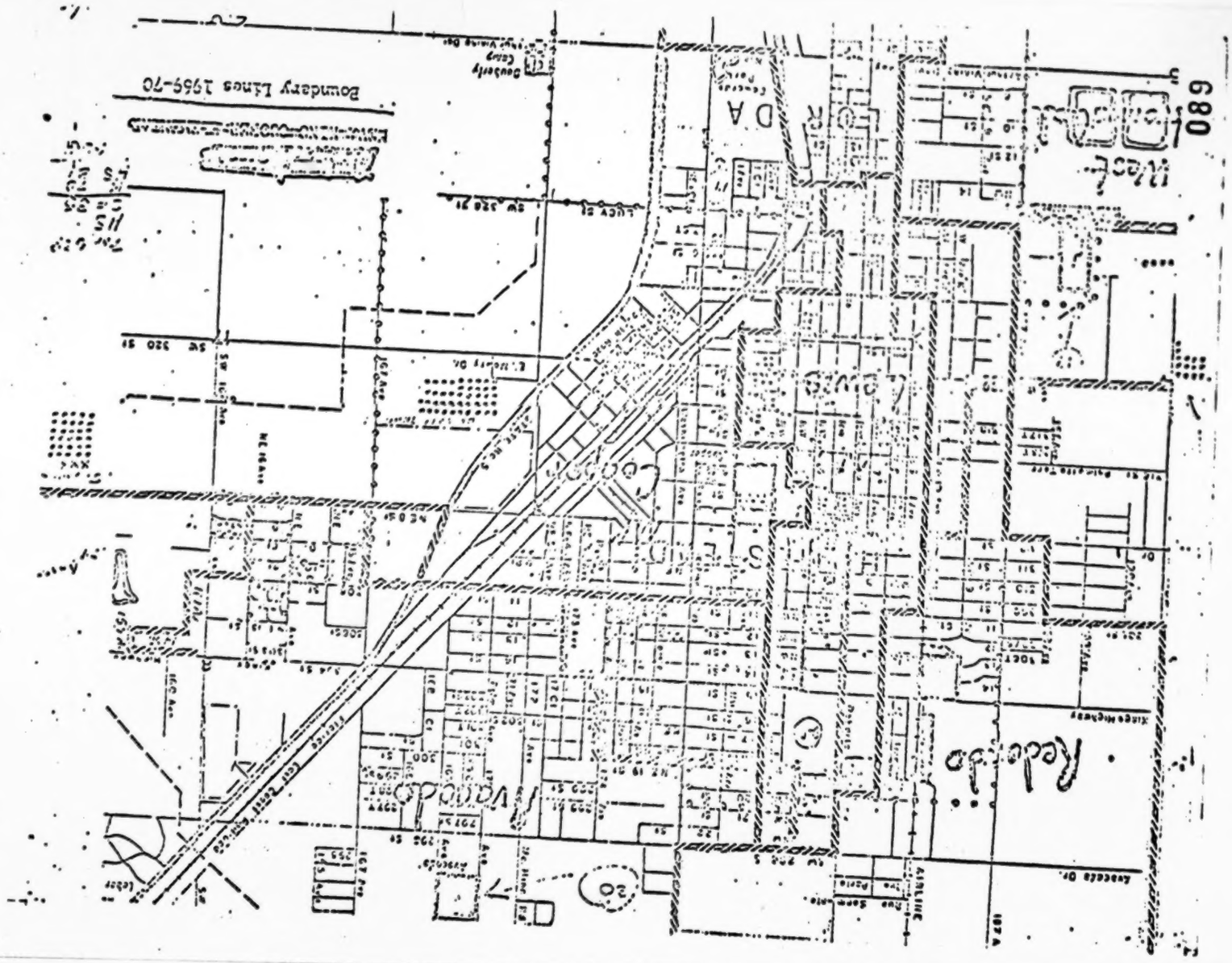
Group #1. A. L. Lewis and West Homestead Elementary Schools. These two schools can be effectively desegregated by rezoning them and Redondo, Neva King Cooper, and Florida City Elementary Schools. All five would have approximately the same proportion of black and white children, and there would be no change in transportation requirements. There would have to be a slight change in the Avocado Elementary School attendance zone but this would have no effect upon the racial composition of its student body. Maps which illustrate how the boundaries for these attendance zones might be drawn along with pupil data on the redrawn zones follow. It should be pointed out that neither these zone boundaries, nor pupil data are absolute, but should be considered estimates with the School Board using them as models for further refinement.

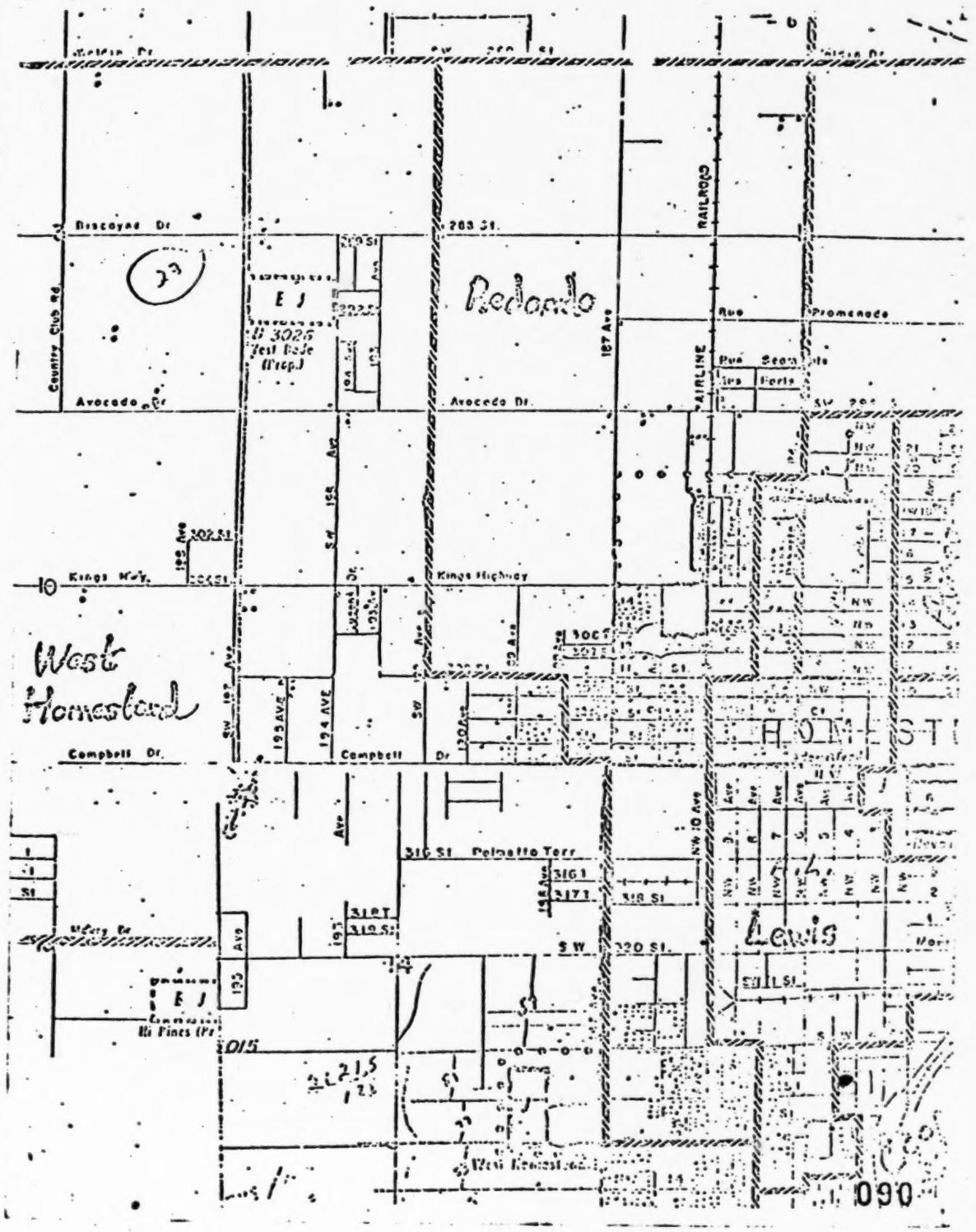
Group #2. R. R. Moton Elementary School should be grouped with the Perrine and Bel-Aire Elementary Schools. Grades 1 through 4 should be assigned to Perrine and Bel-Aire Schools with grades 5 and 6 attending R. R. Moton. U. S. Highway #1 (South Dixie Highway), a heavily traveled route, separates Moton from Perrine and Bel-Aire but there is a traffic signal which would provide the children safe crossing between the schools. This would result in each of the three schools having approximately a 40 per cent black student body. Data on this recommendation follow.

Group #3. The Pine Villa Elementary School cannot be further desegregated without the use of transportation. No recommendation is made.


West Jones
A.L. LEWIS
ELEM.
Florida City
087


Redondo
Avocado
HOMESTEAD
Coss
A.K. Cooper
1960-70 BOUNDARY LINES
088


Boundary Lines 1969-70
680


Biscayne Dr
283 St.
Redondo
Country Club Rd
Avocado Dr
187 Ave
RAILROAD
Promenade
AIRLINE
Kings Hwy.
Kings Highway
West Homestead
Campbell Dr.
HOMESTEAD
Palmetto Terr
Lewis
West Dr
090

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Lewis, A. L.	1-6	18	582	600	97	600
Fla. City	1-6	400	50	450	11	360
W. Homestead	1-6	111	679	790	86	600
Cooper, N. K.	1-6	567	108	675	16	690
Redondo	1-6	400	0	400	0	360
TOTALS		1496	1419	2915	49	2610

1970-71 RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
Lewis, A. L.	1-6	377	358	735	49	600
Fla. City	1-6	235	223	458	49	360
W. Homestead	1-6	352	333	685	49	600
Cooper, N. K.	1-6	296	281	577	49	690
Redondo	1-6	236	224	460	49	360
TOTALS		1496	1419	2915	49	2610

Junior High Schools

There are no junior high schools in the South District projected to enroll more than 85 per cent black students. Several residents have proposed a plan — the Roberts plan — to change the boundaries of Richmond Heights Junior High School (Southwest District), involving a corresponding boundary change for Cutler Ridge and Palmetto Junior High Schools (South District). Inasmuch as Richmond Heights Junior High School is projected to be 61 per cent

black, Cutler Ridge to be 20 per cent black, and Palmetto Junior High School to be 1 per cent black, no recommendation is made concerning these schools. The Roberts plan is carefully developed, however, and appears to have educational merit; the school board may find it desirable to adjust the boundaries so that a greater degree of desegregation can be effected.

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Moton, R. R.	1-6	13	642	655	98	810
Perrine	1-6	396	4	400	1	420
Bel-Aire	1-6	525	0	525	0	600
TOTALS		934	646	1580	41	1830

1970-71 RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
Moton, R. R.	5-6	312	216	528	41	810
Perrine	1-4	249	172	421	41	420
Bel-Aire	1-4	373	258	631	41	600
TOTALS		934	646	1580	41	1830

Senior High Schools

The two senior high schools in the South District will both be desegregated according to the Dade County plan, and no recommendation is made.

SOUTHWEST DISTRICT

Elementary Schools

The Frank C. Martin School is the only elementary school which has a black enrollment of more than 85 per cent. Since there is no access across the canal to the north, it will not be possible to desegregate this school unless transportation is used. No recommendation is made.

The school system's plan to discontinue J. R. E. Lee School as an elementary center and distribute the children among four neighboring schools has been objected to. The wisdom of phasing Lee out as an elementary center was questioned by intervenors when adjoining schools are using approximately 10 portables or when one of the adjoining schools might be more appropriate than Lee for change. The question of whether discriminatory action was involved in the board's plan for Lee can be answered only by the Court, and this report is not concerned with the wisdom of board action except as it affects the desegregation of schools. A desegregated situation would result in either event.

Junior High Schools

The only junior high school concerning which questions have been raised is Richmond Heights. This was discussed *supra* in the South District section.

Senior High Schools

Miami Killian and Miami Southwest Senior High Schools are both proposed to be desegregated schools

under the Dade County plan. There are no black students living within a reasonable distance of Miami Coral Park Senior High School. No recommendations are made concerning the senior high schools in the Southwest District.

NORTHWEST DISTRICT

Elementary Schools

There are 27 elementary schools in the Northwest District with a projected enrollment of 20,030 pupils, 3,798 or 19 per cent of whom are black. Nine of the schools are projected to be all-white. There are four elementary schools which would be enrolling more than 85 per cent black students under the school board's plan: Bunche Park, North County, Rainbow Park, and Nathan Young.

Bunche Park. This school can be effectively desegregated by grouping it with Parkview and Scott Lake Elementary Schools. Fifth and sixth grades could be assigned to Bunch Park and grades 1-4 assigned to Scott Lake and Parkview in line with their capacities. No transportation would be involved, and all three schools would be effectively desegregated. Data reflecting this recommendation follows.

North County. North County School cannot be further desegregated without the use of transportation. No recommendations are made.

Rainbow Park. Opa Locka and Rainbow Park Elementary Schools can be rezoned and effectively desegragated. No additional transportation would be involved. A map which illustrates how the boundaries for these attend-

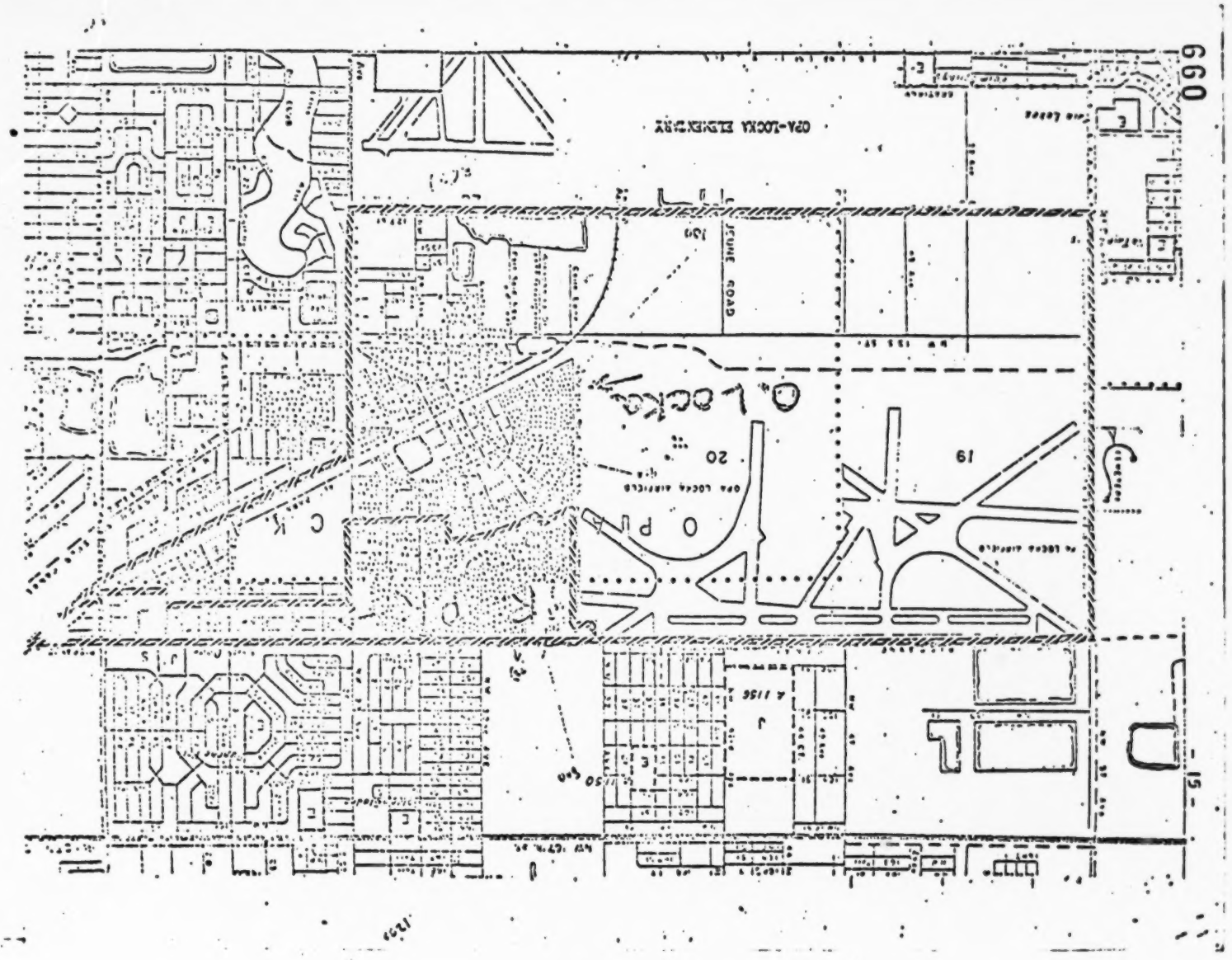
ance zones might be drawn, along with pupil data on the redrawn zones follow. These data and zone boundaries should not be considered absolutes, but be used by the school board as models for further refinement.

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Bunche Park	1-6	0	840	840	100	990
Scott Lake	1-6	841	9	850	1	780
Parkview	1-6	505	10	515	2	570
TOTALS		1346	859	2205	39	2340

1970-71 RECOMMENDED

School	Grade	W	B	T	%B	Capacity
Bunche Park	5-6	448	287	735	39	990
Scott Lake	1-4	519	331	850	39	780
Parkview	1-4	379	241	620	39	570
TOTALS		1346	859	2205	39	2340


660
OPA-LOCKA BOULEVARD
NW 135 ST
NW 135 ST
NW 135 ST

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Opa Locka	1-6	951	19	970	2	990
Rainbow Park	1-6	0	690	690	100	810
TOTALS		951	709	1660	43	1800

1970-71 RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
Opa Locka	1-6	551	419	970	43	990
Rainbow Park	1-6	400	290	690	43	810
TOTALS		951	709	1660	43	1800

Nathan Young. Nathan Young and Westview Elementary Schools (North Central District) can be paired with grades 1-3 assigned to one of the schools and grades 4-6 to the other. Both schools would have approximately 36 per cent black students under this arrangement. Data reflecting this recommendation follows.

Junior High Schools

There are six junior high schools in the Northwest District with a projected enrollment of 10,560 pupils, 2,069 or 19.6 per cent of whom are blacks. All schools except Palm Springs will have members of the minority race, ranging from 5 to 68 per cent black. No recommendation is made.

Senior High Schools

There are two senior high schools in the Northwest District with a projected enrollment of 7,460 pupils, 681 of whom are black. All but a few of these will be assigned to Miami Carol City. No recommendation is made.

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Westview	1-6	685	0	685	0	810
Nathan Young	1-6	76	434	510	85	600
TOTALS		761	434	1195	36	1410

1970-71 RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
Westview	1-3, or 4-6	381	217	598	36	810
Nathan Young	1-3, or 4-6	380	217	597	36	600
TOTALS		761	434	1195	36	1410

NORTH CENTRAL DISTRICT

Elementary Schools

The North Central District contains eleven elementary schools whose black student enrollments exceed 85 per cent: Arcola Lake, Drew, L. C. Evans, Gladeview, Holmes Complex, Liberty City, Lorah Park, Olinda, Orchard Villa, Poinciana Park, and West Little River.

Arcola Lake, Drew, L. C. Evans, Gladeview, Holmes, Liberty City, Lorah Park, Olinda, Orchard Villa, and Poinciana. These schools are situated in such a manner that to desegregate them effectively would require cross busing of students between noncontiguous attendance areas. No recommendations on these schools are made.

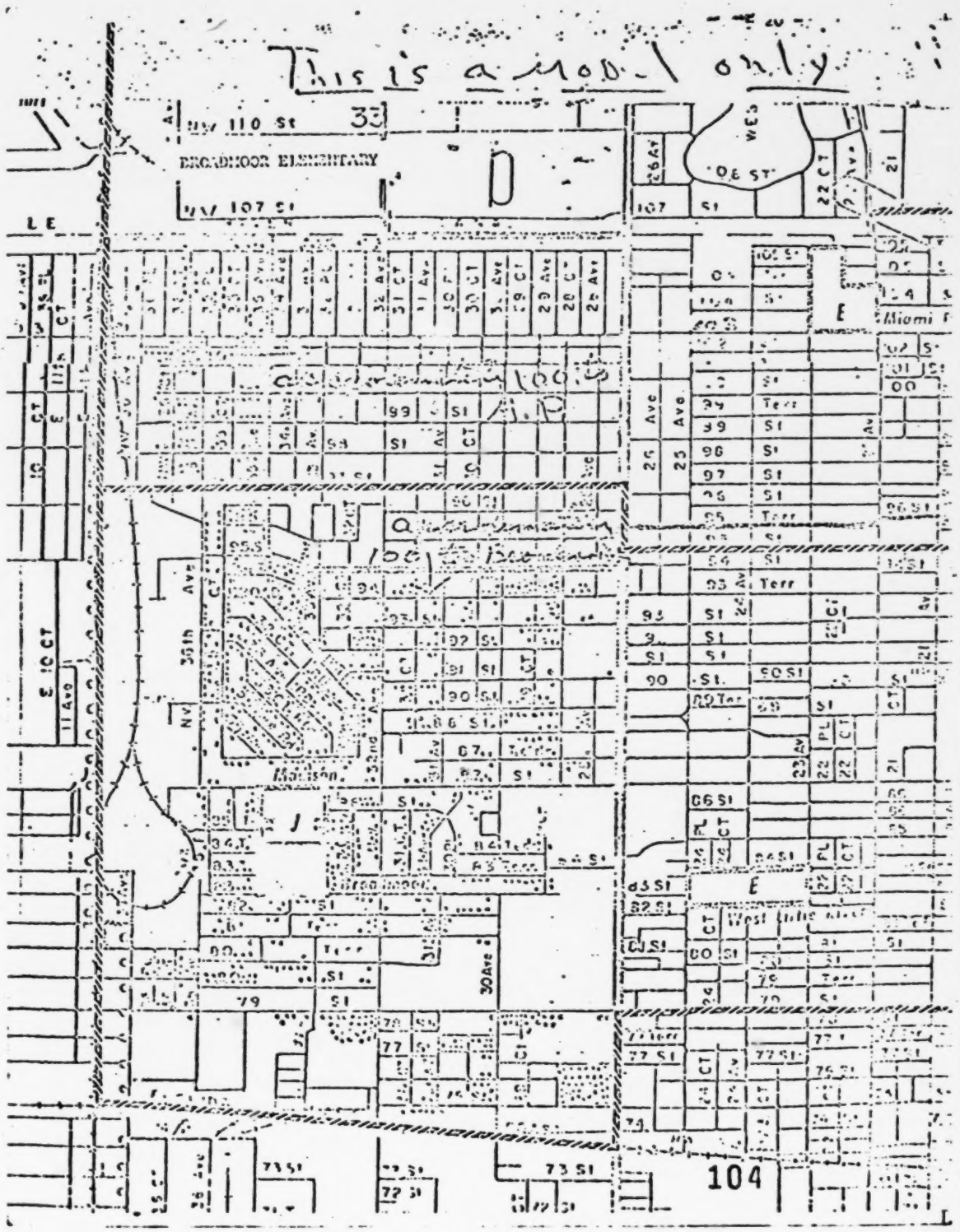
West Little River. It is recommended that the attendance areas of West Little River and Broadmoor be combined. One of the schools might become a primary (1-3) school and the other an intermediate school (4-6). Prior to this pairing approximately 100 white students should be zoned out of the northwest extension of the Broadmoor attendance area to the Miami Park area and an equal number of whites zoned out of the Miami Park attendance area to the Broadmoor zone. A map which illustrates how the boundaries for this recommendation, along with pupil data, follows. These zone boundaries and pupil data should not be considered absolutes, but estimates which the School Board might use as a model for further refinement.

Junior High Schools

Drew Junior High School is projected under the board plan to be an all-black school. It would be impossible to desegregate Drew effectively without cross busing of students between noncontiguous areas. No recommendation is made.

Senior High Schools

Miami Northwestern Senior High School under the board plan will continue to be an all-black school. The only way in which Northwestern could be effectively desegregated would be to use transportation. No recommendation is made.


This is a mod. only
BROADMOOR ELEMENTARY
NW 110 St
NW 107 St
E 10 CT
11 Ave
35th Ave
30 Ave
Madison
104

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
W. Little River	1-6	79	911	990	92	930
Broadmoor	1-6	975	10	985	1	960
TOTALS		1054	921	1975	47	1890

1970-71 RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
W. Little River	1-3 or 4-6	527	461	988	47	930
Broadmoor	1-3 or 4-6	527	460	987	47	960
TOTALS		1054	921	1975	47	1890

SOUTH CENTRAL DISTRICT

Elementary Schools

The South Central District contains ten elementary schools whose black student enrollments exceed 85 per cent. These schools are: Allapattah, Bethune, Carver, Douglas, Dunbar, Earlington Heights, Floral Heights, Kelsey Pharr, F. S. Tucker, and Wheatley.

Allapattah, Earlington Heights, Floral Heights, Wheatley and Douglas. The Allapattah, Earlington Heights, Floral Heights, Wheatley, and Douglas Schools are situated in such a manner as to make effective desegregation impossible without transportation. No recommendation is made in regard to these 5 schools.

Bethune. It is recommended that the attendance areas of Bethune and Melrose Elementary Schools be combined. One of the schools might become a primary (1-3) school and the other become an intermediate (4-6) school. Data which reflect this recommendation follow.

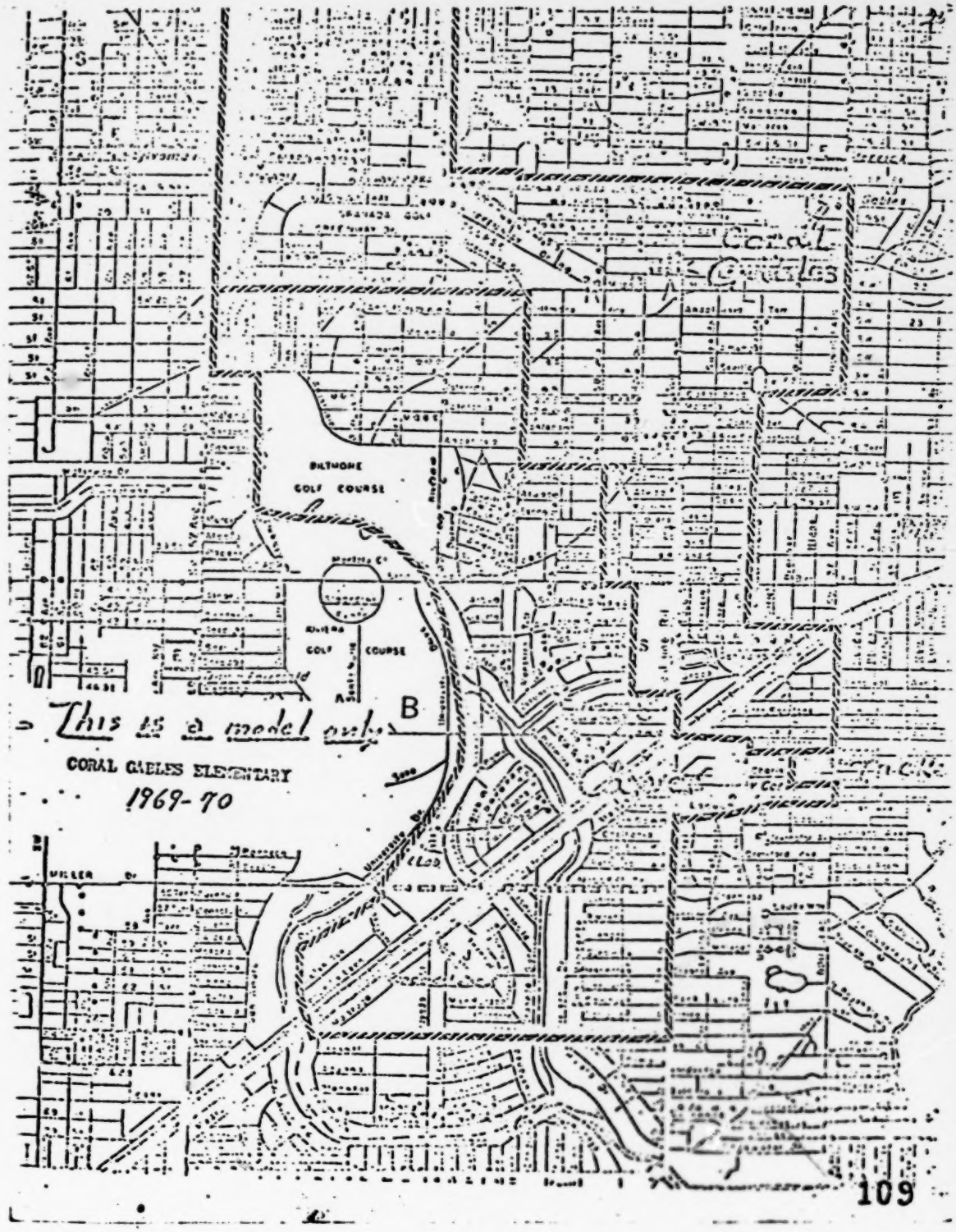
Carver. Carver Elementary can be effectively desegregated by rezoning Carver, Sunset, and Coral Gables elementary school zones. It is estimated that approximately 150 white students from Sunset would be reassigned to Carver, approximately 250 white students from Coral Gables to Carver, and approximately 400 black students from Carver to Coral Gables. A map which illustrates how the boundaries for this attendance zone might be drawn, along with pupil data on the redrawn zones follow. These zone boundaries and pupil data should not be considered absolutes, but estimates which the school board might use as models for further refinement.

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Bethune	1-6	28	897	925	97	900
Melrose	1-6	926	29	955	3	840
TOTALS		954	926	1880	49	1740

1970-71 RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
Bethune	1-3 or 4-6	477	463	940	49	900
Melrose	1-3 or 4-6	477	463	940	49	840
TOTALS		954	926	1880	49	1740


BILTMORE
GOLF COURSE
COLF COURSE
This is a model only
CORAL GABLES ELEMENTARY
1969-70
B
109

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Carver	1-6	0	715	715	100	660
Coral Gables	1-6	705	0	705	0	750
Sunset	1-6	851	74	925	8	840
TOTALS		1556	789	2345	34	2250

1970-71 RECOMMENDED PLAN
(Estimated Data)

School	Grade	W	B	T	%B	Capacity
Carver	1-6	400	315	715	44	660
Coral Gables	1-6	455	400	855	47	750
Sunset	1-6	701	74	775	10	840
TOTALS		1556	789	2345	34	2250

Dunbar. It is recommended that the attendance areas of Dunbar, Miramar, and Buena Vista Elementary Schools are combined. Miramar and Buena Vista become primary schools (1-3), with the students proportionately distributed. Dunbar becomes an intermediate school (4-6). Data which reflect, this recommendation follow.

Kelsey Pharr. It is recommended that the attendance zones of Kelsey Pharr and Comstock be combined. One might become a primary school (1-3), and the other become an intermediate school (4-6). Data which reflect this recommendation follow.

Tucker. It is recommended that the attendance zones of Tucker and Dade Elementary Schools be combined. The new attendance zone should reclaim those Tucker fifth

and sixth grade students presently assigned to Carver Elementary, Coconut Grove Elementary and Carver Junior High with the assignment of pupils by grade to be left to the school board. This recommendation would mean a slight reduction of black students in both Coconut Grove and Carver Elementary Schools. The school board will probably want to adjust the pupil assignments from Tucker to accommodate for the capacities of Tucker and the surrounding schools. Estimated data reflecting this recommendation follow.

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Dunbar	1-6	71	944	1015	93	1200
Miramar	1-6	400	100	500	20	450
Buena Vista	1-6	697	53	750	7	660
TOTALS		1168	1097	2265	48	2310

1970-71 RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
Dunbar	4-6	584	548	1132	48	1200
Miramar	1-3	234	220	454	48	450
Buena Vista	1-3	350	329	679	48	660
TOTALS		1168	1097	2265	48	2310

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Kelsey Pharr	1-6	0	850	850	100	840
Comstock	1-6	1188	12	1200	1	780
TOTALS		1188	862	2050	42	1620

1970-71 RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
Kelsey Pharr	1-3 or 4-6	594	431	1025	42	840
Comstock	1-3 or 4-6	594	431	1025	42	780
TOTALS		1188	862	2050	42	1620

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Tucker	1-4	0	790	790	100	630
Dade	1-6	658	7	665	1	600
TOTALS		658	797	1455	55	1230

1970-71 RECOMMENDED PLAN
(Estimated Data)

School	Grade	W	B	T	%B	Capacity
Tucker	1-3 or 4-6	329	398	727	55	630
Dade	1-3 or 4-6	329	399	728	55	600
TOTALS		658	797	1455	55	1230

Junior High Schools

There are three junior high schools in the South Central District projected to enroll more than 85 per cent black students. These schools are Allapattah, Brownsville, and Booker T. Washington. These schools cannot be effectively desegregated without the use of cross busing between noncontiguous zones. No recommendations are made.

If Dorsey Junior High School remains closed, it is recommended that all pupils who are transported from the Dorsey zone be assigned to white majority schools to effect further desegregation.

Senior High Schools

Miami Jackson Senior High School is projected to have an enrollment of 2580 students, 2193 or 85 per cent of whom are black. This indicates that approximately 400 white students are resident in the Jackson attendance zone. If one examines the racial make-up of the elementary and junior high school areas coterminous with the Jackson attendance zone, it is clear that closer to 1400 potential senior high students reside in the area. Approximately 1000 white students resident in the Jackson attendance area apparently attend Miami Senior High south of the Miami River. The latter is projected to enroll 4525 students, one thousand over capacity. If these students were enrolled at Jackson, the school could be effectively desegregated and the population pressure lessened at Miami High.

NORTHEAST DISTRICT

Elementary Schools

There are 22 elementary schools in the Northeast District with a projected 1970-71 enrollment of 12,560 pupils, only 216 of whom are black. Sixteen of these schools are all-white. Desegregation of these schools would require busing in of black students and busing out of whites. No recommendations are made.

Junior High Schools

There are 6 junior high schools in the Northeast District with a projected 1970-71 enrollment of 9,195 pupils, 906 of whom are black. All of these schools will have some pupils of the minority race, ranging from 3 per cent to 26 per cent.

A good arrangement seems to have been made in busing a number of black pupils from the central city schools, which are overcrowded, to certain beach schools. It is recommended that this program be continued to relieve the overcrowded schools.

Senior High Schools

There are 3 senior high schools in the Northeast District with a projected 1970-71 enrollment of 9,580 pupils, 687 of whom are black. All of the schools will have some pupils of the minority race, ranging from 2 per cent to 13 per cent. Further desegregation of these schools would require busing in of black students and busing out of whites. No recommendations are made.

OBJECTIONS RAISED TO BOARD PLAN

The objections raised by plaintiff intervenor CTA to the Board plan are largely legal in nature and hinge around the definition of a unitary system. The task of defining the requirements of a unitary system has been traditionally left to the courts.

The objections raised by plaintiff intervenor, Corbett-Ellis, have been discussed *supra* in the section on the Southwest District.

No other objections were raised.

[TITLE OMITTED]

ORDER APPROVING INTERIM DESEGREGATION PLAN FOR DADE COUNTY PUBLIC SCHOOLS

In 1956, following the landmark school integration cases of *Brown* v. *Board of Education*, 347 U.S. 483 (1954) and 349 U.S. 294 (1955), a lawsuit was filed in the United States District Court in the Southern District of Florida. The case was styled *Gibson* v. *Dade County School Board* and sought to effect the integration of the Dade County schools. On March 17, 1960 United States District Judge Joseph P. Lieb entered an order providing for the implementation of a freedom of choice plan in the schools. This order also stated

> "It is further ORDERED, ADJUDGED AND DECREED that the Court retains jurisdiction of this cause for such time as may be necessary to put the plan herein provided into operation and for determination as to whether further proceedings are necessary."

From the time of the entry of this order to the present this case has laid dormant. In the interim the integration of the Dade County School System has proceeded at a moderate rate. At the close of the 1968-69 school year there were 42 all negro schools in the system out of a total of 217 schools. On July 1, 1969 the Department of Health, Education & Welfare, charged by Congress in Title 42 U.S.C. §2000 with administering federal funds to aid public education and to assist in the process of desegregating public schools, notified the Dade County School System that it was not in substantial compliance with Title VI of the 1964 Civil Rights Act which concerns desegregation. At the time of the notification HEW stated:

> "It is expected that the Dade School System will develop and implement a plan which will eliminate the dual school structure in the system by no later than September 1970 and that those steps toward that end which are administratively feasible will be taken by September 1969."

In accordance with this direction the school board obtained the services of the Florida School Desegregation Consulting Center, a federally funded center at the University of Miami, The Center studied the Dade System for approximately 1 month and on July 23, 1969 submitted an Interim Desegregation Plan for the 1969-70 school year. The School Board approved this plan on July 25 with two changes. The rejected the recommendation that there be pairing of two groups of elementary schools in South Dade County and they eliminated the all black Mays Junion-Sen: High School. The revised interim plan was approved by HEW on August 4 pending receipt of a final plan by February 1, 1970.

At this point the school system began making preparations to operate under the revised interim plan for the 1969-70 school year. Certain portions of the plan met with public opposition as did certain steps taken to implement the plan. This opposition culminated in the filing of several lawsuits in the Eleventh Judicial Circuit of the State of Florida. The various plaintiffs were the parents of school children in the Dade system and the defendants were uniformly the Dade County School Board. The first of these suits attacked the Board's action with regard to the elimination of the all black Mays school. It is styled *Pate v. Dade County School Board.* The Board's action was alleged to be arbitrary and capricious and also as

taken in violation of Florida Statute 286.011, known as the "government in the sunshine law." This law requires that any official action taken by an agency of the State of Florida be taken in public proceedings and that a written record of such proceedings be made. The school board petitioned this Court for removal of the Pate case on August 25, 1969, alleging that the case was one of exclusive federal jurisdiction. At 8:30 a.m. on August 27, the court heard a motion to remand and under the doctrine of *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1963) remitted the case to the State Court for determination of state law issues and retained jurisdiction of the case for determination of any federal questions. At 9:00 p.m. on August 27, Circuit Judge David Popper entered a temporary injunction restraining the School Board from implementing its plan of July 25 as it related to Mays School. The basis of the injunction was Judge Popper's finding that the "government in the sunshine law" had been violated and that the action of the School Board in regard to Mays was void. The effect of this ruling was to require Mays to open as an all black school for the school year 1969-70.

At 3:30 p.m. on August 27, the Court considered the request of the School Board that the Court exercise jurisdiction in the Pate case. Based on the effect of the State Court's ruling, which negated the immediate elimination of an all black school, this Court accepted jurisdiction. Other factors which dictated the exercise of jurisdiction were the issuance of another injunction negating a separate portion of the Board plan and the fact that eventually under the State Court ruling, all action taken by the Board on July 25, when the plan was approved, would be held void as being in violation of the sunshine law. The State

Court injunctions, of course, ran only in favor of the particular plaintiffs before that court. The forseeable result was that after sufficient plaintiffs came before the State Court the entire plan would be voided. The voiding of an interim plan providing for more integration is unquestionably a question for the Federal Courts. Finally, reiterating the last order in Gibson — this court retained jurisdiction over the Dade County School System for the purpose of supervising its desegregation.

The case of Pardo v. Dade County School Board has been removed from the State Court to this Court. The case of Frank v. Dade County School Board haas been filed in this court. Both of these cases concern attacks on aspects of the interim plan and it is ORDERED that they be consolidated with the Pate case in accordance with oral rulings made this morning. It is further ordered that petitions to intervene on the said of the plaintiffs Filed by *Webb, et al., Rosen, et al., Wolff, et al., Eagle, et al.,* and *Reiter, et al.,* as parents of children attending Dade public schools are all granted. IT IS FURTHER ORDERED that petitions to intervene on the side of the defendants filed by the *Dade County Classroom Teachers Association* and *Love,* et *al.,* are granted.

At this point, after two days of testimony and argument, eighty-four hours before the seventh largest school system in the United States is due to open, this Court must approve a desegregation plan under which this system is to be operated for the 1969-70 school year. This plan must

[1]By virtue of the order of the Acting Chief Judge of the Southern District of Florida, William O. Mehrtens, the case of Gibson v. Board of Public Instruction of Dade County, Florida is transferred to this division and consolidated with the case of Pate v. Dade County School Board Presently in this division.

be formulated in accordance with the Constitutional standards delineated by the Supreme Court and the Fifth Circuit Court of Appeals. In devising such a plan the Court is confronted with a dilemma. It is clear from *Green v. County School Board of New Kent County, Virginia*, 391 U. S. 430 (1968), the most recent *United State of America v. Jefferson County Board of Education et, al.*, ... F.2d ....., (No. 27444, June 26, 1969, 5th Cir.) decision, and numerous other Fifth Circuit decisions that the time for desegregation is now, that delays are no longer tolerable. The case of *Adams v. Mathews*, 403 F.2d 181 (5th Cir. 1968) clearly states "If in a school district there are still all-Negro schools . . . the existing plan fails to meet constitutional standards as established in Green." The only comprehensive plan before the Court is the previously discussed school board Interim Plan for the school year 1969-70. Regrettably, this plan contemplates the operation of 38 all-black schools. Regardless of HEW's approval the plan does not meet Constitutional standards. The Court gave careful consideration the the alternative plans but their implementation, if Constitutional, was not feasible and would impair the operation of the Interim Plan.

At this eleventh hour a balance must be struck. To require immediate desegregation of all schools in Dade County would result in chaos. It is therefore the order of this Court that the Interim Plan for desegregation approved by the Dade County School Board at its July 25th meeting for the 1969-70 school year is, in all respects, adopted and approved by this Court. *United States of America v. The Board of Education of Baldwin County, Georgia, et al.*, ... F.2d ..... (No. 27281, 5th Cir., July 9, 1969). This plan now being the order of this court all persons are enjoined from attack upon or interference in

any way with the operation of such except by appellate review. The School Board is directed to furnish to this Court within 30 days the results of a study delineating the administrative feasibility of total disestablishment of a dual school system at the elementary and junior high levels at the beginning of the second semester of the 1969-70 school year. Such study shall also include the following criteria:

> (1) maximum utilization of school buildings; (2) density of population; (3) proximity of pupils to schools; (4) natural boundaries; and (5) Welfare of students.

Henry v. Clarksdale Municipal Separate School District, et al., ... F.2d ....., (No. 23255, 5th Cir., March 6, 1969).

The Board is also directed to furnish by March 1, 1970 a plan to eliminate the dual school structure in grades 10-12 by no later than September 1, 1970. The Court approves the collaberation of the School Board with the Florida Desegregation Consulting Center and the United States Department of Health, Education and Welfare and directs that the continuing cooperation of these agencies be sought in complying with the court's order.

The Court retains jurisdiction of this cause for the entry of such further orders that may be necessary.

ENTERED This 29th day of August, 1969 at 6:00 p.m. at Miami, Florida.

s/ C. CLYDE ATKINS

United States District Judge

[TITLE OMITTED]

ORDER APPROVING TEACHER INTEGRATION PLAN AND DENYING MOTION BY INTERVENORS FOR IMMEDIATE PUPIL INTEGRATION

The background of this case is set forth in orders issued on August 29 and December 10, 1969. The former order approved the operation of the Dade County School Board under an interim integration plan endorsed by the Department of Health, Education and Welfare. The latter order implemented the opinion of the Fifth Circuit Court of Appeals in *En Banc School Cases*, —F.2d— (5th Cir., 1969) [Nos. 26285 and 12 others, slip opinion dated December 1, 1969] (hereinafter *Singleton*). The Dade County School Board was directed to submit a plan for full integration of the Dade County School System's instructional staff by February 1, 1970. I expanded the teacher ratio guideline set forth in *Singleton* because of availability and certification requirements at the elementary, junior high and senior high levels. The school system is to be broken down into three levels—grades 1-6, 7-9, 10-12. The ratio in a school on a particular level is to correspond with the ratio of black to white teachers in all schools on that level. The varying requirements for teachers on these different levels and their availability dictates such an expansion.

This plan was filed before me on January 13, 1970 and a hearing was held on January 21 to consider objections to that plan. The only objection filed was that of the Dade County Classroom Teachers Association, representing 75% of the teachers in this school system. The CTA urged that the plan prepared by the Florida Desegregation Cen-

ter which follows precisely the ratios of Singleton, as modified by me, be approved. Evidence was presented at that time concerning the desirability of deviation up to 30% in certain schools from the *Singleton* guidelines. I am not unappreciative of the desire and reasons for continuity in the faculties of individual schools. However, I am bound by the *Singleton* mandate.

I find the plan, insofar as it follows the recommendation of the Florida Desegregation Center, in conformity with *Singleton* and, with the exception of two schools, approve such plan and order that it shall be accomplished as of February 9. The two schools excepted are Olinda and Arcola Park Elementary. In these schools special teacher training programs exist which warrant their exclusion from the black/white teacher ratio required of all other elementary schools. These programs will terminate at the end of this summer and beginning in September, 1970 these two schools will conform to the required teacher ratio.

The Court finds that it is imperative that the school system be closed to pupils from February 3 thru 6, 1970 for the purpose of conducting a human relations and orientation program directly affecting those teachers transferred. Therefore, it is

ORDERED AND ADJUDGED that those days shall be considered to have the same number of pupils in attendance, absent, and in membership as on Wednesday, January 7, 1970 the last day of the fourth attendance reporting period, and that all State funds shall be distributed under the Minimum Foundation Program as though that number of children were in full attendance and membership in the Dade County Schools.

This plan now being the order of this Court all per-

sons are enjoined from attack upon or interference in any way with the operation of such except by appellate review.

Also before the Court at this time is a motion by intervenors Alice Love, Carswell Washington, and Margaret Washington for immediate pupil desegregation in the Dade County School System. Joining as Amicus is the American Civil Liberties Union. This motion is based upon the recent decision of the United States Supreme Court in *Carter v. West Feliciana Parish School Board*, No. 944, and related cases, entered January 14, 1970. A hearing was held on January 22, 1970 on this motion, at which time this Court heard argument from all concerned parties as to the advisability of such immediate desegregation. Certain evidence was also offered by way of proffer at this time.

It is my decision that ordering total pupil desegregation by February 1, March 1 or any time prior to the opening of school in September of 1970 is not physically possible under the circumstances herein delineated. The evidence before me is that the only pupil desegregation plan which is available for implementation is that which is to be filed by the School Board on February 1 in accordance with my order on August 29. This plan, in addition to being geared to September 1, 1970 implementation, provides that 21 schools in Dade County will have all-black student bodies. While this is a reduction from 38 all-black schools provided for in the interim plan now in operation, I do not find that such plan would meet the constitutional standard of a unitary school system as defined by the Fifth Circuit Court of Appeals in *Adams v. Mathews*, 403 F.2d 181 (5th Cir. 1968). The plan proposed is no more than another interim step in Dade County's progress toward a unitary school system. For this reason I find that disruption and chaos as reflected by the evidence, should not be

visited upon the Dade schools merely to implement an interim plan. There is no plan available to the Court at present which would eliminate the all-black schools and it will unquestionably require substantial time to prepare such a constitutionally acceptable plan. Accordingly the motion of the intervenors is denied.

It is further ordered that the Dade County School Board shall submit a plan to this Court by April 1 which provides for the operation of a unitary school system by September, 1970 in accordance with the comments above. In this regard the Court notes the contention of the Classroom Teachers Association of the desirability of having each school operate with a ratio of black to white students equal to the ratio of black to students in the entire school system. Objections to such plan are to be served and filed by April 13, 1970. Hearings on that plan and any objections will commence at 9:30 a.m. on Friday, April 24, 1970.

The Court wishes to call the attention of the parties to the following excerpt from *Singleton* concerning appeals:

> In the event of an appeal or appeals to this court from an order entered as aforesaid in the district courts, such appeal shall be on the original record and the parties are encouraged to appeal on an agreed statement as is provided for in Rule 10(d), Federal Rules of Appellate Procedure (FRAP). Pursuant to Rule 2, FRAP, the provisions of Rule 4(a) as to the time for filing notice of appeal are suspended and it is ordered that any notice of appeal be filed within fifteen days of the date of entry of the order appealed from and notices of cross-appeal within five days thereafter. The provisions of Rule 11 are suspended and it is ordered that the record be transmitted to this court within fifteen days after filing of the notice of appeal.

The provisions of Rule 31 are suspended to the extent that the brief of the appellant shall be filed within fifteen days after the date on which the record is filed and the brief of the appellee shall be filed within ten days after the date on which the brief of appellant is filed. No reply brief shall be filed except upon order of the court. The times set herein may be enlarged by the court upon good cause shown.

ENTERED at Miami, Florida this 26th day of January, 1970.

United States District Judge

cc. Henry A. Edgar, Jr., Esq.
Paul Steinberg, Esq.
Thomas H. Anderson, Esq.
Wm. A. Frieder, Esq.
Hon. Claude Kirk
Hon. William C. Cramer, M.C.
George C. Bolles, Esq.
Allen H. Rosenson, Esq.
Aaron Foosaner, Esq.
Lane & Mitchell
Tobias Simon, Esq.
Karl Hart, Esq.
James E. Glass, Esq.
James W. Matthews, Esq.
Richard Y. Feder, Esq.
Wicker, Smith, et al. (Mr. Davant)
Robert R. Frank, Esq.
J. E. Ludick, Esq.
Wm. M. Manker, Esq.
Daniel N. Heller, Esq.
Larry S. Stewart, Esq.

CERTIFICATE

OFFICIAL CERTIFICATE of the Clerk of the Board of County Commissioners, Dade County, Florida, in his official capacity as Custodian of the Records of the Board of County Commissioners.

I have made a diligent search of all of the ordinances of the above Board in Dade County, State of Florida.

I HEREBY CERTIFY, on the basis of such search and my knowledge of the ordinances of the Board of County Commissioners, Dade County, Florida that there is not now and never has been any ordinance, resolution or legislative enactment in this jurisdiction having the force of law, restricting members of the Negro race in their right to reside in any particular place, location or geographical area, or denying to members of the Negro race any right or privilege respecting residence or ownership or leasing of real property, which does not or did not apply with equal force to members of the Caucasian race.

DATED this 30th day of January, A.D. 1970.

ATTEST: E. B. LEATHERMAN, CLERK

By /s/ Edward Phelan

Deputy CLERK

SEAL

CERTIFICATE

OFFICIAL CERTIFICATE of the Clerk of the CITY OF MIAMI BEACH, FLORIDA, in his official capacity

as Custodian of the Records of The City of Miami Beach, Florida.

I have made a diligent search of all of the ordinances of the The City of Miami Beach, Florida in Dade County, State of Florida.

I HEREBY CERTIFY, on the basis of such search and my knowledge of the ordinances of The City of Miami Beach, Florida that there is not now and never has been any ordinance, resolution or legislative enactment in this jurisdiction having the force of law, restricting members of the Negro race in their right to reside in any particular place, location or geographical area, or denying to members of the Negro race any right or privilege respecting residence or ownership or leasing of real property, which does not or did not apply with equal force to members of the Caucasian race.

DATED this 30TH day of JANUARY, A.D. 1970.

/s/ Ruth B. Rouleau

City Clerk-Finance Director

SEAL

CERTIFICATE

OFFICIAL CERTIFICATE of the Clerk of the CITY OF CORAL GABLES, FLORIDA, in his official capacity as Custodian of the Records of THE CITY OF CORAL GABLES, FLORIDA.

I have made a diligent search of all of the ordinances of the THE CITY OF CORAL GABLES, FLORIDA in Dade County, State of Florida.

I HEREBY CERTIFY, on the basis of such search and my knowledge of the ordinances of The CITY OF CORAL GABLES, FLORIDA that there is not now and never has been any ordinance, resolution or legislative enactment in this jurisdiction having the force of law, restricting members of the Negro race in their right to reside in any particular place, location or geographical area, or denying to members of the Negro race any right or privilege respecting residence or ownership or leasing of real property, which does not or did not apply with equal force to members of the Caucasian race.

DATED this 30TH day of JANUARY, A.D. 1970.

/s/ Loretta V. Sheehy

Loretta V. Sheehy CLERK

SEAL

CERTIFICATE

OFFICIAL CERTIFICATE of the Clerk of the City of Miami, Florida, in his official capacity as Custodian of the Records of THE CITY OF MIAMI, FLORIDA.

I have made a diligent search of all of the ordinances of the THE CITY OF MIAMI, FLORIDA in Dade County, State of Florida.

I HEREBY CERTIFY, on the basis of such search and my knowledge of the ordinances of the CITY OF MIAMI, FLORIDA that there is not now and never has been any ordinances, resolution or legislative enactment in this

jurisdiction having the force of law, restricting members of the Negro race in their right to reside in any particular place, location or geographical area, or denying to members of the Negro race any right or privilege respecting residence or ownership or leasing of real property, which does not or did not apply with equal force to members of the Caucasian race.

DATED this 30th day of January, A.D. 1970.

/s/ F. L. Correll

F. L. CORRELL
CITY CLERK

SEAL

when a child is assigned to a school in order to assist and achieve a racial balance in that school, you are thereby effectively excluding him from every other school in the County solely on the basis of his race or color.

THE COURT: All right. May we proceed?

MR. BOLLES: Yes, sir. I would like to call Dr. Edward L. Whigham.

THEREUPON —

EDWARD L. WHIGHAM

called as a witness on behalf of the defendant Dade County School Board, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name and address:

THE WITNESS: Edward L. Whigham, 1410 Northeast Second Avenue.

DIRECT EXAMINATION

BY MR. BOLLES:

Q. What position do you occupy in the Dade County Schools, Doctor?

A. Superintendent of Schools.

Q. And I believe in a previous appearance before this Court you have established how long you have been with the school system and what your qualifications are as an educator?

A. Yes, I have.

Q. Dr. Whigham, I would like to ask you to state what the School Board has done with regard to desegregation commencing in 1959?

A. If I remember those dates correctly, there was a suit here in Dade County, I believe the decision was in December of '58, which declared that section of the Florida Constitution which required separate schools by race to be unconstitutional. It was either the latter part of '58 or the first part of '59.

Several months later, the School Board decided to admit some black children to what had been a white school. In that fall the school system opened with two schools enrolling black youngsters, two schools that had formerly been white schools.

And then, in the years since, there has been an increase in the number of students in desegregated schools. There has gradually been an increase, this would be a decade, in this decade from '59 to '69.

Q. And can you tell the Court, upon opening the schools in September of 1961, how many schools had been integrated?

A. In '61, I believe, when school opened, in '61, there were five schools that were designated as desegregated. Then additional ones admitted youngsters of the other race during that year; four I believe, to be exact.

Q. Now, do you have —

A. No, no, no. I believe my figure is wrong here. I am thinking of the wrong year. In '61 is your question?

Q. Yes, sir.

A. There were 9 in the fall and there were 5 more during the year, which brought it up to 14.

Q. Now, in 1962 in the fall, how many schools were integrated?

A. The school system reported 17 that year.

Q. And in 1963?

A. 28.

Q. And in October of 1963 how many schools had been desegregated?

A. 42.

Q. Now, for the fall of 1964, state how many schools and staffs had been desegregated.

A. In '64 the school system was reporting 51 schools as desegregated and 9 teaching staffs.

Q. Now, had HEW or any governmental agency made a study of our school system at that time?

A. No, they had not made a study of our school system. As a matter of fact, they did not make a study of our school system until 1969.

Q. Then the opening of schools in 1964 with this amount of desegregation accomplished was done with or without prodding from HEW or other governmental sources?

A. Well, in '64 that's right, because it wasn't until that year that the Civil Rights Act was enacted; yes, sir.

Q. All right sir. Skipping down to the opening of school in 1968 and 1969, how many children were enrolled in the public schools in that school year?

A. 1968-69 — something over 230,000.

Q. and do you recall how many were black and how many were white?

A. I have it noted here. The actual number was a total of 232,272. For the whites it was 175,801 and your blacks 56,471.

Q. And how many schools had a biracial composition at that time?

A. The school system was reporting 134 in that year.

Q. And please state how many all black high schools there were in 1963.

A. In 1963 I believe there were 5, Mr. Bolles.

Q. Now, how many all black high schools are there in the school system today?

A. By all black, I am assuming you mean totally, all the student body is black?

Q. Yes, sir.

A. One that we consider in that category.

Q. Now, what happened to the other four schools — four high schools?

A. These schools were junior-senior high schools — you are speaking of the five high schools in '63?

Q. Yes, sir.

A. Those schools were junior-senior high schools. The senior high student body were merged into other high schools on an integrated basis and the schools were maintained as junior high schools. Of those — let me see if I can get my numbers straight — four of them that were done in this manner, one was done last year as a part of our interim desegregation plan when the Mays Senior High School students were moved to South Dade, and the junior high was integrated.

The plan we had under consideration would complete the desegregation of the remaining junior highs that were part of those four junior-senior high schools that you referred to in '63.

Q. Now, Dr. Whigham, what is the School Board's position with regard to desegregation?

A I think the School Board's position now is that they recognize the responsibility to desegregate the school system, to establish a unitary school system, and it recog-

nizes the responsibility to desegregate its staff in accordance with the order of this Court, so that this staff is not, so to speak, racially identifiable staff, or so that the schools are not racially identifiable by their staffs.

Q. Dr. Whigham, was any plan ever submitted to the Board for desegregation of the Dade County Schools?

A. You mean in what period of time?

Q. In 1970.

A. This year?

Q. Yes, sir.

A. Yes, sir. A proposed plan prepared by the School administration was submitted to the Board.

Q. Has any plan been adopted by the Dade County School Board?

A. No plan has been adopted by the Dade County School Board. We are speaking of the plan for the school year '70-'71?

Q. Yes, sir.

A. No plan has been adopted by the School Board.

Q. Why is that, sir?

A. The Board had it under consideration during the month of January, and while it had the plan under consideration on January 21st I believe it was, they had public hearings before the Board on this plan.

There had been public hearings before while this plan was under administrative preparation.

Miami, Florida,
February 3, 1970.

THE COURT: The Court makes the following findings on the basis of the evidence adduced by the Board in its proffer as to the 21 black schools in the plan for the school year beginning in September, 1970.

1. Three new elementary schools will have been constructed and ready for occupancy.

2. Some 60 to 70 portable classrooms are to be shifted.

3. All dual and optional zones will be eliminated.

4. Of the anticipated enrollement of 244,000 students some 57,911 will be black.

5. The total number of schools in operation will be 219, of which an estimated 148 will be integrated and 21 will be all black.

6. The 21 black schools, four of which were formerly all white, are located where a high concentration of black people live.

7. To desegregate the 21 black schools would require transportation beyond the attendance zones established for these schools.

8. The Board now furnished transportation to an estimated 25,000 to 40,000 students living more than two miles from a school.

9. The policy of the Board is not to furnish transportation for the purpose of integration, although it does so to overcome crowded conditions.

10. The Superintendent of the Board admitted on cross examination, subject to necessary feasibility studies, that by transporting an estimated 14,000 students a distance up to five or six miles at an annual cost of $50 to $75 per pupil, one all black high school and four all black junior high schools can be integrated.

11. The Board is utilizing its allowable full tax millage, has an annual budget of 70 to 75 million dollars and is urgently in need of more funds.

— — — — —

CERTIFICATE

STATE OF FLORIDA :
: SS
COUNTY OF DADE :

I, George E. Ahern, Official Court Reporter, do hereby certify that the foregoing transcript, pages 1 to 241 is a true and correct transcription of my shorthand notes as taken by me at the hearing on motions in the above entitled cause at the time and place aforesaid.

DATED at Miami, Florida, this 5th day of February, 1970.

/s/ George E. Ahern

Official Court Reporter

[TITLE OMITTED]

ORDER

The Court has timely received the plan of the Dade County School Board for desegregation of its school system for the school year 1970-71 and time for filing objections has now passed. The School Board plan does not indicate that it has been considered or approved by the Florida School Desegregation Consulting Center.

By order of August 29, 1969 this Court approved the previous consultation of the School Board with the Florida School Desegregation Consulting Center and directed the School Board to continue this in formulating a final plan. On January 30, 1970 the Court was presented with a motion by Intervenors, Dade County Classroom Teachers Association, to amend the Order of January 26, 1970 so as to require the Florida School Desegregation Consulting Center to design and submit a plan for the operation of a unitary school system in Dade County. The Court deferred ruling at that time.

Subsequent to the entry of this Court's Order of January 26, 1970 the Fifth Circuit Court of Appeals has entered a ruling that, on its face, seems to contradict the substance of that order. *Ellis v. The Board of Public Instruction of Orange County, Florida*, Slip Opinion No. 29124 (Feb. 17, 1970). The appeal to the Fifth Circuit from the January 26 Order has not been ruled upon. In light of this set of circumstances the Court feels it would be extremely helpful if it had the benefit of the facilities and experience of the Desegregation Center. It is therefore

ORDERED AND ADJUDGED that Intervenor's Motion to Amend be and the same is hereby granted to the extent herein provided.

IT IS FURTHER ORDERED that:

1. The Florida School Desegregation Consulting Center is requested to make a thorough study of the plan proposed by the School Board and the objections filed by the intervenors;

2. The School Board shall lend every assistance to the Center and cooperate fully with its efforts.

3. The Center is requested to file a report of its study and, if it finds deficiencies in the plan or merit in the objections, to submit its recommendations and any proposed plan it might deem advisable to formulate by May 15, 1970.

4. The present hearing on objections is postponed until May 22, 1970 at 9:30 a.m. to allow sufficient time both for the Fifth Circuit to rule on the appeal and the Center to submit its recommendations.

5. No petition for leave to intervene shall be heard unless it is properly noticed for one of the two intervening regular motion calendars on April 27, 1970 or May 11, 1970.

DONE AND ORDERED at Miami, Florida this 16th day of April, 1970.

C. CLYDE ATKINS

United States District Judge

cc. Dr. Gordon Foster
Florida School Desegregation Consulting Center
University of Miami, Coral Gables, Florida

All Counsel of Record

[TITLE OMITTED]

SCHOOL BOARD'S REPLY TO MEMORANDUM OPINION AND MOTION FOR REHEARING

COMES NOW the Defendant, DADE COUNTY SCHOOL BOARD, by and through its undersigned attorneys, and submits its reply to the Memorandum Opinion of June 26, 1970.

Attached hereto are Exhibits 1 through 9, the first eight of which relate to matters upon which the Court invited the School Board to make comment, and Exhibit 9 which relates to rules and regulations proposed by the School Board for the implementation of a majority to minority transfer policy.

* * * * *

Respectfully submitted,

BOLLES, GOODWIN, RYSKAMP & WARE
Attorneys for Defendants
1410 N. E. Second Avenue
Miami, Florida 33132

By /s/ George C. Bolles
GEORGE C. BOLLES, Of Counsel

Exhibits 1 and 2 eliminated. Not pertinent.

July 1, 1970

ALLAPATTAH AND BUENA VISTA ELEMENTARY SCHOOLS

If these two schools were paired, the racial ratio would be approximately 70 percent Black and 30 percent White which is considered undesirable as experienced in the Lee-Ludlam pairing.

In addition, Allapattah houses only grades 1-5 and Buena Vista houses 1-6. This would create some special problems. If the sixth grade of Buena Vista had to be placed at Allapattah Junior High School, which houses the sixth grade of Allapattah Elementary, it would mean they would attend this school for only one year and then proceed to the Junior High School in their area, which would be Robert E. Lee Junior High School.

The pupil population of Buena Vista Elementary School is 88% Spanish Language Origin. This requires special programs (see attachment) for the newly arrived Cuban refugee pupils as well as those pupils that are continuing to learn English as a second language. Pairing these schools would require a duplication of and an increase of special service personnel to provide the necessary programs.

Also, the pairing of these two schools would require transportation for approximately 250 pupils. At the present time there are no transported pupils at either school.

Upon consideration of the above data the School Board voted to recommend to the Court that the Board plan be adopted.

EXHIBIT 3

DADE COUNTY PUBLIC SCHOOLS PROGRAM IN BILINGUAL EDUCATION 1969-1970

Since early 1961 there has been a heavy influx of Spanish-speaking pupils into the Miami area. By 1970 the number of Spanish-speaking pupils in the Dade County Public Schools reached 50,343. The unique instructional needs of these pupils are now being served through three major programs, English as a second language, Spanish-S and the bilingual schools.

English as a Second Language

Many pupils attending the Dade County Public Schools speak little or no English. Because these pupils have educational needs which are quite different from those of native English-speaking pupils, it is important that their needs be recognized and that the necessary provisions be made for meeting them. The challenge of making adequate educational provisions for non-English-speaking children has been met by establishing special classes in English as a second language. These classes are offered in the elementary, junior and senior high schools which have a large non-English-speaking enrollment. During the 1969-1970 school year, approximately 8,914 pupils were enrolled in English as a second language classes. Non-English-speaking pupils at all levels are classified on the basis of their

proficiency in English and grouped homogenously according to their language ability. Pupils knowing little or no English are classified as non-independents, these knowing some English but still needing special attention are classified as intermediate, those knowing English well enough to participate in the regular curriculum are classified as independents. The non-independents receive up to three hours of special instruction in English a day; the intermediates, up to two hours; and the independents, up to one hour. Pupils assigned to one hour of English may be offered English SL or they may be given the regular English courses offered to English-speaking pupils. Schedules are flexible. Pupils are reclassified and transferred as their progress dictates. Both "self contained" and "pull-out" English SL programs are offered.

The English instruction received by non-English-speaking pupils is English as a second language. Audio-lingual techniques are emphasized, but reading and writing also receive attention. Regardless of whether the time devoted to English SL is one, two or three hours, the high school students receive English credit equivalent to the credit given to English-speaking students. That is, at the high school level students may have English SL for three hours but get one unit of credit. Ordinarily, non-English-speaking pupils spend approximately two years in progressing from non-independent to independent, but some make faster progress and some slower. In the elementary school, non-English-speaking pupils are promoted or retained largely in terms of their achievement in English SL and arithmetic.

Inservice programs for training English SL teachers are offered regularly by the County Inservice Department and the Office of Bilingual Education.

Spanish-S

The elementary schools and the junior and senior high schools which have large numbers of Spanish-speaking pupils are offering special classes in Spanish for native Spanish-speaking pupils. These classes provide an instructional program in the Spanish language arts. The program, Spanish-S, is designed to help the native speaker of Spanish develop and expand his level of literacy in his native language and develop an appreciation for his cultural heritage.

At the secondary level, Spanish-S is assigned credit equivalent to the credit in Spanish offered to English-speaking pupils. During the 1969-1970 school year almost 14,609 Spanish-speaking pupils were enrolled in Spanish-S classes. All classes are taught by native speakers of Spanish.

Special Cuban culture courses have been offered for two consecutive years to advanced Spanish-S students at Miami Senior, with the cooperation of the Division of Continuing Education at the University of Miami. Three instructors from the Division conduct classes in Cuban art, literature, history and geography, all of which are coordinated by the regular Spanish teacher at the high school. These courses are expected to continue through 1970-1971 also.

July 6, 1970

DOUGLAS AND RIVERSIDE ELEMENTARY SCHOOLS

The original enrollment projection for Douglas Elementary School was 1,400 pupils for the 1970-1971 school year while Riverside Elementary School has a projected

enrollment of 1,845 pupils. Indications are that the Riverside enrollment will be approximately 100 pupils over the estimated membership for 1970-71 due to the fact that this is one of the major receiving areas for refugee pupils.

Pairing of the Riverside and Douglas Elementary Schools would involve approximately 3,300 pupils. Assuming that the grade levels were split so that grades 1-3 were housed in one facility and grades 4-6 were housed in the other, approximately 1,600 - 1,700 five-to-twleve-year old pupils would have to cross the Miami River which is the natural boundary line between the two schools. While there are three bridges crossing the river, indications are that the majority of pupils would use the Fifth Street bridge as a route between the two schools. This would be a very dangerous situation for such a great number of pupils crossing at a point where there is major traffic congestion during the hours that the pupils are going to and from school.

It is estimated that this pairing would require the transportation of approximately 225 pupils who are now within walking distance to school.

The Riverside Elementary School is geared to present an instructional program which meets the needs of Spanish speaking pupils. (see attachment). The basis for organized instruction in the Riverside Elementary School is the English proficiency of the Spanish speaking pupils. This grouping permits emphasis on the acquisition of language patterns as developed through English as a second language program and permits instruction in Spanish, the native language of 97.5 per cent of the Riverside Elementary School pupils.

In addition, the present plans at Riverside Elementary School are to implement again a beginning reading program taught in Spanish to native speakers of Spanish, with the intention of improvement of reading performance. This program was temporarily interrupted in February, 1970 with the transfer of teachers.

If Douglas Elementary School and Riverside Elementary School were paired, the programs with the refugee pupils would require, to a large extent, segregation of the Spanish speaking pupils for instructional purposes. A duplication and increase of special service personnel would be required to provide the necessary programs.

Upon consideration of the above data the School Board voted to recommend to the Court that the Board plan be adopted.

Attachment **EXHIBIT 4**

July 6, 1970

BUENA VISTA, DUNBAR, MIRAMAR, WEST DUNBAR AND PHYLLIS WHEATLEY ELEMENTARY SCHOOLS

In attempting to involve these five schools in a grouping plan several major problems must be recognized.

If these schools were grouped or paired it would involve over 4,000 pupils of whom approximately 54 percent are Black. Included in the present population of the West Dunbar Elementary School are Spanish-speaking pupils who are transported there for orientation programs from schools other than those in the suggested grouping.

Forty-one percent of the total enrollment of the five schools is of Spanish Language Origin and require special programs (see attachment). Special programs offered to the disadvantaged pupils would be in conflict with the Spanish as a second language program. Resources relating to materials and personnel would have to be duplicated and materially increased in order to maintain the present programs.

The grouping of the five schools will result in additional transportation depending on the housing of the various grade levels in the schools paired or grouped. More pupils must walk greater distances and pupils will be required to cross several major traffic arteries as well as the railroad crossings.

The administrative complexity of treating five district attendance areas as one presents a situation which is not administratively feasible.

The HEW report suggested the grouping of Dunbar, Buena Vista and Miramar. This would require pupils to walk greater distances but would not involve any significant number of pupils in transportation. The ratio balance is considered unfavorable. The ratio in grouping the three schools would be approximately 48 percent Black.

Upon consideration of the above data the School Board voted to recommend to the Court that the Board plan be adopted.

EXHIBIT 5

COMSTOCK AND KELSEY PHARR ELEMENTARY SCHOOLS

The pupil population of the Comstock Elementary School is 84 per cent Spanish Language Origin. This requires special programs (see attachment) for these pupils who are continuing to learn English as a second language. The pairing of these schools would require a duplication of special service personnel to continue these special programs at both schools.

Present indications are that with the increasing number of Cuban Refugee pupils continuing to enter into the Dade County Public Schools that the membership projection for 1970-71 at the Comstock Elementary School is understated by several hundred pupils. This significant increase in Spanish speaking pupils will require a considerable expansion in the orientation program. The staff at Comstock is geared to handle this influx of Spanish speaking pupils while pairing with Kelsey Pharr would require duplication of special service personnel and impair the instructional program.

As stated in the court order, the pairing of these two schools would require the transportation of approximately 123 pupils who are presently within walking distance to school. The additional pupils mentioned in the previous paragraph could increase the number of transported pupils. Under the majority/minority transfer policy any pupil at Kelsey Pharr could transfer to a predominately White school with transportation as ordered by the Court.

Upon consideration of the above data the School Board voted to recommend to the Court that the Board plan be adopted.

Attachment **EXHIBIT 6**

Exhibit 7 eliminated. Not pertinent.

DADE AND TUCKER ELEMENTARY SCHOOLS

The HEW plan would pair Dade and Tucker Elementary Schools, bringing back into this area the fifth and sixth graders who have been attending either the Carver or Coconut Grove Elementary Schools. This would create an over-capacity of approximately 100 pupils at each school. If these two schools are paired, the ratio would be approximately 55 percent Black. This was found to be undesirable in previous experience with pairing.

Another problem will be that 68% of the pupil population of Dade Elementary School is of Spanish language origin and requires special programs (see attachment) that are not part of the curriculum at Tucker Elementary. The pairing of these schools would require a duplication of special service personnel to carry on this program at both schools. In addition, Dade Elementary has an ungraded program and Tucker Elementary a graded program which would necessitate a change in the program structure in both schools. This would be an extremely difficult educational adjustment for all pupils involved.

The suggestion made that grade six in these two schools be placed in Carver Junior High is not feasible since Carver Junior will be at capacity with the newly-adopted plan of housing the 870 seventh grade pupils from both Carver and Ponce de Leon Junior High beginning in the fall of 1970.

The pairing would require additional transportation and many pupils would be walking greater distances to

school. The Court noted the danger of the five-to-twelve-year-old pupils traversing the Dixie Highway. Pupils also would have to travel Bird Road, Douglas Road, Grand Avenue, and the railroad passing through that area. These traffic obstacles constitute an extremely hazardous route.

Upon consideration of the above data the School Board voted to recommend to the Court that the Board plan be adopted.

EXHIBIT 8

Exhibit 9 eliminated. Not pertinent.

ORDER REQUESTING SUPPLEMENTAL REPORT

The Court has received and carefully reviewed the School Board's Reply to Memorandum Opinion filed July 6, 1970. Although the Court is pleased with the report it feels the need of further information for many reasons.

Since the rendition of the Court's Order of June 26, 1970 the Fifth Circuit Court of Appeals has entered a ruling concerning Pinellas County, Florida. *Bradley v. Board of Public Instruction of Pinellas County Florida* (5th Cir. Slip Opinion No. 28639, 7/1/70). The Fifth Circuit, in that case, required the pairing of one Black junior high school and required the school board to either rezone or close down one Black senior high school in addition to requiring the pairing or rezoning of six Black elementary schools. All of these modifications were required completely on the initiative of the Fifth Circuit. This Court is concerned that if the Fifth Circuit requires similar modifications in the plan ultimately approved by this Court on its own initiative, it will be done without

the benefit of an adequate record. Further activity on the district court level after a ruling by the appellate court would serve only to delay the implementation of the plan to the disadvantage of all parties concerned.

With receipt of the School Board's report the Court has had additional information with which it could review the School Board's plan and the Court's Order of June 26, 1970. Many new questions have been raised which require answers. In addition, the report does not fully respond to all of the areas the Court has indicated require a response.

In its July 6, 1970 report the School Board requests, in the alternative, a rehearing on the Bel-Aire - Perrine - Moton grouping plan adopted by the Court. The Court has received many communications from parents in this area (including an avalanche of telegrams just prior to the May 22, 1970 hearing) as well as many other areas of Dade County. The parents in certain school zones have been more prolific and descriptive than in other school zones. The Court is concerned that the safety factors at each school may not be accurately reflected by the quantity and quality of the communications it has received from concerned parents. An objective, professional analysis of safety factors is needed. It is therefore,

ORDERED AND ADJUDGED that the School Board shall file with the Court, within five days of the date hereof a supplemental reply of the same nature as previously required covering the points discussed below:

(1) A compilation which shows for each school in the system:

a. the designed capacity

b. the number of proposed portables on the site

c. the capacity with the proposed portables on the site

d. the intended pupil populations (showing the figures of both the School Board plan and the plan as modified)

e. the maximum number of portables that can be easily placed on the site

f. the capacity using the maximum number of portables.

The compilation should reflect, by footnote, whether the capacity of each school is affected by the use of a modified school day.

(2) A compilation reflecting the proposed pupil attendance and racial composition under both the School Board plan and the plan as modified for each grade level in each school.

(3) A list of those schools which have a substantial Spanish-as-a-second-language program.

(4) An explanation of the term "Special programs offered to the disadvantaged pupils . . ." (mentioned in Exhibit 5 to the July 6, 1970 report) and a list of those schools which have such programs.

(5) An explanation of what is meant by and the educational significance of the difference between a graded and an ungraded program.

(6) A report showing why the Lewis School cannot be paired with the Cooper School.

(7) A report showing why the Florida City School cannot be paired with the West Homestead School.

(8) A report showing why the Lewis, Cooper, West Homestead, Florida City and Redondo Schools cannot be rezoned in another fashion so as to desegregate these schools.

(9) A report showing why the Allapattah Elementary School cannot be paired with the Santa Clara School.

(10) A report showing why the Dunbar School cannot be paired with the Buena Vista School.

(11) A report showing why the Wheatley School cannot be paired with the Miramar School.

(12) A report showing why the Arcola Lake School cannot be paired with the Blanton School.

(13) A report showing why the Holmes Complex School cannot be grouped with the Little River and Edison Park Schools.

(14) A report showing why either the Lorah Park School or the Gladeview School cannot be paired with the Hialeah School.

(15) A report showing why the Lorah Park, Hialeah and Curtiss Schools cannot be rezoned.

(16) A report showing why the B. T. Washington

Junior High School cannot be grouped with the Ida M. Merritt and Citrus Grove Junior High Schools.

(17) A report showing why the Allapattah Junior High School cannot be either rezoned or grouped with the Miami Edison and R. E. Lee Junior High Schools.

(18) A report showing why the Brownsville Junior High School cannot be either rezoned or grouped with the Miami Springs Junior High School.

(19) A report, with particular emphasis upon paragraphs 16 - 18 above, which fully details the School Board's position in regard to the relative desirability of rezoning and grouping. In all three paragraphs the rezoning should be done in such a way as to achieve the same or more desirable racial balance in each school as achieved by a grouping plan. In fashioning zone lines for the schools indicated in *all* the paragraphs above, all alternatives should be considered. A map indicating the location of these zone lines should be furnished the Court.

(20) A report, supported by affidavit or any tangible evidence desired, showing the nature, extent and seriousness of safety factors for each school which is the subject of either the HEW plan, the CTA plan or a Court request for a response.

DONE AND ORDERED at Miami, Florida this 10th day of July, 1970.

/s/ C. Clyde Atkins

United States District Judge

cc. All counsel of record

[TITLE OMITTED]

REPLY TO ORDER REQUESTING SUPPLEMENTAL REPORT

COMES NOW the Defendant, DADE COUNTY SCHOOL BOARD, by and through its undersigned attorneys, and for reply to the Order Requesting Supplemental Report heretofore issued by the Court attaches Exhibits 1 through 20 hereto.

Respectfully submitted,

BOLLES, GOODWIN, RYSKAMP & WARE
Attorneys for Defendant
1410 N.E. Second Avenue
Miami, Florida 33132

By_____
GEORGE C. BOLLES, Of Counsel

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Reply to Order Requesting Supplemental Report was mailed to all parties of record this ____ day of July, 1970.

_____
GEORGE C. BOLLES

EXHIBIT I

PLANNED HOUSING OF PUPILS FOR 1970-71

Attached are the school lists requested, noting capacity, portables assigned, and revised capacity figures, including adjustments through the use of modified school schedules.

The maximum number of portables, which can be placed on a school site is limited by a number of factors, including (1) total area of site, (2) shape of site and building layout, (3) number of trees and shrubs, (4) elevation and contour of site, (5) amount of playground space required for program, (6) support facilities of the school such as food service, rest rooms, library and administrative areas.

The practical maximum number of portables on any site is approximately 15, due to lack of sufficient support facilities. However, on a large number of sites, 15 portables would severely reduce the playground space, and thereby impact the physical education program.

As the number of portables on any site exceeds ten classrooms, rest room facilities become critical, requiring the placement of portable rest room facilities when these are available. Presently there are only twelve such facilities in the county and all are in use.

A number of schools do not have sufficient food service facilities to support 15 portables without extending feeding schedules too long before and after noon. Many sites could not house 15 portables without utilizing hard-

courts and parking areas, or removing extensive amounts of landscaping.

In view of the many factors which affect portable placement, the "maximum portables" column notes the actual maximum due to land area of the site. If no figure is noted, the maximum is 15 portables. The capacity using the maximum number of portables would be the modified capacity increased by 30 pupils for each additional portable assigned.

Addition of the maximum number of portables to any site would affect the program at that school. The degree of impact must be determined in each case by the district and school staffs.

The addition of portables to some schools would require extensive modification of utilities serving the facility. Improvement of drainage would be required in many instances, as well as extensive addition of walkways.

The time required to move portables varies with the number to be moved at one time. The commercial services utilized for moves are limited, as is the school system's capability of disconnecting and reconnecting buildings. The following estimates include planning and administrative time, disconnect, moving and connecting time.

EXHIBIT I
July 17, 1970
Response to Court Order
of July 10, 1970

Number of Classrooms moved	Approximate Time
1 to 5	3 weeks
5 to 25	6 weeks
25 to 50	12 weeks
50 to 100	4 - 6 months

Movement of restroom facilities; placement of walkways, and addition of drainage may require additional time.

Approximately 80 classrooms are in the process of being relocated in preparation for the opening of schools on August 31, 1970.

There are 402 portable classrooms available for instructional purposes.

PLANNED HOUSING OF PUPILS FOR 1970-71

SCHOOL	DESIGNED CAPACITY	PORTABLES ON SITE	CAPACITY WITH PORTABLES	TYPE OF SCHED.	MODIFIED CAPACITY	*PORTABLE MAXIMUM ON SITE	ESTIMATED MEMBERSHIP	ESTIMATED RACIAL COMPOSITION % WHITE	% BLACK
Bay Harbor	480	0	480	Reg.	480	8	340 (1-6)	100	0
Biscayne	900	0	900	Reg.	900	4	500 (1-6)	100	0
Biscayne Gardens	780	0	780	Reg.	780		750 (1-6)	100	0
Bryan W.J.	840	0	840	Reg.	840		745 (1-6)	100	0
Feinberg	720	0	720	Reg.	720	0	340 (1-6)	100	0
Fulford	600	0	600	Reg.	600		410 (1-6)	85	14
Gratigny	810	0	810	Reg.	810		690 (1-6)	100	0
Graymolds Park	600	0	600	Reg.	600		630 (1-6)	100	0
Hibiscus	600	0	600	Reg.	600		540 (1-6)	100	0
Highland Oaks	450	13	840	Reg.	840		720 (1-6)	100	0
Ives, Madie	630	1	630	Reg.	630		640 (1-6)	100	0
Natural Bridge	450	0	450	Reg.	450		320 (1-6)	85	15
Norland	930	0	930	Reg.	930		830 (1-6)	100	0
North Beach	840	0	840	Reg.	840	8	660 (1-6)	100	0
North Miami	690	0	690	Reg.	690		600 (1-6)	93	7
Norwood	600	0	600	Reg.	600		555 (1-6)	100	0
Oak Grove	600	0	600	Reg.	600		545 (1-6)	93	7
Opa	480	0	480	Reg.	480		390 (1-6)	94	6
Parkway	780	0	780	Reg.	780		620 (1-6)	100	0
Sabal Palm	1020	0	1020	Reg.	1020		950 (1-6)	100	0
South Beach	420	0	420	Reg.	420	0	395 (1-6)	98	2
Treasure Island	480	0	480	Reg.	480		390 (1-6)	100	0
Fisher, Ida M.	1000	0	1000	Reg.	1000	0	790 (7-9)	74	26
Jefferson	1174	0	1174	Reg.	1174		1210 (7-9)	89	11
Kennedy	1301	0	1301	10-Hr.	2276		2100 (7-9)	92	8
Nautilus	1258	0	1258	Reg.	1258	0	1475 (7-9)	90	10
Norland	1465	0	1465	10-Hr.	2563		2030 (7-9)	97	3
North Miami	1290	0	1290	Reg.	1290	0	1590 (7-9)	88	12
Miami Beach Sr.	1822	0	1822	Reg.	1822		2215 (10-12)	94	6
Miami Norland Sr.	2787	0	2787	10-Hr.	4877		3690 (10-12)	87	13
North Miami Sr.	2753	6	2933	Mod	3379	6	3675 (10-12)	98	2

NORTHWEST DISTRICT

PLANNED HOUSING OF PUPILS FOR 1970-71

SCHOOL	DESIGNED CAPACITY	# PORTABLES ON SITE	CAPACITY WITH PORTABLES	TYPE OF SCHED.	MODIFIED CAPACITY	*PORTABLE MAXIMUM ON SITE	ESTIMATED MEMBERSHIP	ESTIMATED RACIAL COMPOSITION % WHITE	% BLACK
Bunche Park	990	0	990	Reg.	990		840 (1-6)	0	100
Carol City	990	2	1050	Reg.	1050		1030 (1-6)	93	7
Crestview	780	0	780	Reg.	780		725 (1-6)	100	0
DuPuis	600	0	600	Reg.	600		530 (1-6)	99	1
Earhart, A.	630	0	630	Reg.	630		545 (1-6)	99	1
Flamingo	840	0	840	Reg.	840		820 (1-6)	100	0
Golden Glades	600	5	750	Reg.	750		760 (1-6)	67	33
Meadowlane	810	0	810	Reg.	810		720 (1-6)	100	0
Miami Gardens	600	1	630	Reg.	630		620 (1-6)	73	27
Miami Lakes	600	6	780	Reg.	780		785 (1-6)	100	0
Milam, M.A.	600	4	720	Reg.	720		770 (1-6)	100	0
Myrtle Grove	810	0	810	Reg.	810		775 (1-6)	85	15
North Carol City	630	1	660	Reg.	660		670 (1-6)	67	33
North County	780	5	930	Reg.	930		930 (1-6)	12	88
North Glade	780	0	780	Reg.	780		780 (1-6)	95	5
1/ No. Glade Relief	600	17	510	Reg.	510		550 (1-6)	96	4
North Hialeah	900	0	900	Reg.	900		650 (1-6)	100	0
North Twin Lakes	600	0	600	Reg.	600		465 (1-6)	100	0
Opa Locka	990	2	1050	Reg.	1050		1025 (1-6)	62	38
Palm Springs	780	0	780	Reg.	780		760 (1-6)	98	2
Palm Springs North	840	6	1020	Reg.	1020		925 (1-6)	100	0
Parkview	570	0	570	Reg.	570		515 (1-6)	98	2
Rainbow Park	810	0	810	Reg.	810		650 (1-6)	59	41
Scott Lake	780	1	810	Reg.	810		850 (1-6)	99	1
Twin Lakes	870	0	870	Reg.	870		750 (1-6)	100	0
Walters, Mae	960	4	1080	Reg.	1080		1035 (1-6)	98	2
Young, Nathan	600	0	600	Reg.	600		510 (1-6)	15	85
Carol City Jr.	1301	0	1301	10-Hr.	2276		1775 (7-9)	77	23
Filer, Henry H.	1476	0	1476	10-Hr.	2583		1930 (7-9)	91	9
Hialeah Jr.	1275	0	1275	Mod.	1832		1790 (7-9)	95	5
North Dade Jr.	1188	0	1188	Mod.	1657		1570 (7-9)	32	68
Palm Springs Jr.	1334	0	1334	Mod.	1900		1850 (7-9)	100	0
Parkway Jr.	1314	0	1314	Mod.	1876		1645 (7-9)	80	20
Hialeah Sr.	2633	2	2693	10-Hr.	4607	2	4575 (9-12)	99	1
Miami Carol City Sr.	2731	0	2731	Mod.	3351		2085 (10-12)	78	22

NORTH CENTRAL DISTRICT

PLANNED HOUSING OF PUPILS FOR 1970-71

SCHOOL	DESIGNED CAPACITY	PORTABLES ON SITE	CAPACITY WITH PORTABLES	TYPE OF SCHED.	MODIFIED CAPACITY	*PORTABLE MAXIMUM ON SITE	ESTIMATED MEMBERSHIP	ESTIMATED RACIAL COMPOSITION % WHITE	% BLACK
Arcola Lake	840	2	900	Reg.	900		840 (1-6)	12	88
Blanton	760	3	870	Reg.	870		775 (1-6)	87	13
Bright	840	0	840	Reg.	840		775 (1-6)	89	11
Broadmoor	960	0	960	Reg.	960		990 (1-3)	54	46
Curtiss	570	0	570	Reg.	570		570 (1-6)	100	0
Drew, C.R.	840	4	960	Reg.	960		895 (1-6)	0	100
Edison Park	870	0	870	Reg.	870	0	885 (1-5)	47	53
Evans, L.C.	960	4	1080	Reg.	1080		955 (1-6)	0	100
Franklin	730	0	730	Reg.	730		630 (1-6)	97	3
Gladeview	600	0	600	Reg.	600		655 (1-6)	2	98
Hialeah	900	0	900	Reg.	900	1	895 (1-6)	100	0
Holmes Complex	1440	0	1440	Reg.	1440	5	1575 (1-6)	0	100
Johnson	210	5	360	Reg.	360	8	380 (5-6)	71	29
Lakeview	600	0	600	Reg.	600		580 (1-6)	100	0
Liberty City	900	4	1020	Reg.	1020		920 (1-6)	0	100
Little River	1080	0	1080	Reg.	1080		1100 (1-6)	65	35
North Park	840	0	840	Reg.	840		740 (1-6)	0	100
Miami Park	1020	5	1170	Reg.	1170		1080 (1-6)	80	20
Miami Shores	870	0	870	Reg.	870		890 (1-6)	100	0
Miami Springs	660	0	660	Reg.	660	0	650 (1-6)	90	10
Morningside	510	0	510	Reg.	510	0	470 (1-5)	99	1
Olinda	840	0	840	Reg.	840		835 (1-6)	0	100
Orchard Villa	1170	0	1170	Reg.	1170	4	1230 (1-6)	0	100
Poinciana Park	1170	1	1200	Reg.	1200		1220 (1-6)	0	100
Shenandoah	660	5/a	810	Reg.	810	5	715 (1-5)	30	70
South Hialeah	840	10/b	1140	Reg.	1140	10	915 (1-6)	100	0
Springview	600	2	660	Reg.	660		595 (1-6)	100	0
W. Little River	930	0	930	Reg.	930		940 (4-6)	49	51
Westview	810	0	810	Reg.	810		685 (1-6)	100	0

/a Includes two non-portable frame classrooms.
/b Includes three non-portable frame classrooms.

NORTH CENTRAL DISTRICT (Cont.)

PLANNED HOUSING OF PUPILS FOR 1970-71

SCHOOL	DESIGNED CAPACITY	PORTABLES ON SITE	CAPACITY WITH PORTABLES	TYPE OF SCHED.	MODIFIED CAPACITY	*PORTABLE MAXIMUM ON SITE	ESTIMATED MEMBERSHIP	ESTIMATED RACIAL COMPOSITION % WHITE	% BLACK
Drew Jr.	1460	0	1460	Reg.	1460		1550 (7-9)	0	100
Madison Jr.	1253	1	1200	Reg.	1200	6	1406 (7-9)	50	50
Mann Jr.	1166	3	1256	Reg.	1256	6	1270 (7-9)	76	24
Miami Edison Middle	1263	2	1323	Reg.	1323	6	1215 (6-8)	40	60
Mi Springs Jr.	1670	1	1700	Reg.	1700		1565 (7-8)	82	18
Westview Jr.	1465	1	1495	Reg.	1495		1560 (7-9)	83	17
Miami Central Sr.	2600	0	2600	Mod.	3210		3200 (9-12)	70	30
Miami Edison Sr.	2036	0	2036	Mod.	2641	0	2347 (9-12)	73	27
Miami Northwestern Sr.	1953	0	1953	Mod.	2499	6	2980 (9-12)	0	100
Miami Springs Sr.	2600	0	2600	10-11r.	4550		3570 (9-12)	91	9

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SOUTH CENTRAL DISTRICT

PLANNED HOUSING OF PUPILS FOR 1970-71

SCHOOL	DESIGNED CAPACITY	PORTABLES ON SITE	CAPACITY WITH PORTABLES	TYPE OF SCHED.	MODIFIED CAPACITY	*PORTABLE MAXIMUM ON SITE	ESTIMATED MEMBERSHIP	ESTIMATED RACIAL COMPOSITION % WHITE	% BLACK
Allapattah	1030	4	1200	Reg.	1200		1170 (1-5)	1.0	99.0
Auburndale	840	0	840	Reg.	840		890 (1-6)	99.0	1.0
Bethune	900	2	960	Reg.	960		840 (1-3)	47.0	53.0
Buena Vista	660	0	660	Reg.	660	0	750 (1-6)	93.0	7.0
Carver El.	660	1/a	690	Reg.	690	0	715 (1-6)	.0	100.0
[illegible]rue Grove	930	16	1410	Reg.	1410	16	1330 (1-6)	100.0	0
Coconut Grove	420	0	420	Reg.	420	4	430 (1-6)	51.0	49.0
Comstock	1020	11	1350	Reg.	1350		1450 (1-6)	99.0	1.0
Coral Gables	750	0	750	Reg.	750	0	705 (1-6)	100.0	0
Coral Way	930	4	1050	Reg.	1050		1055 (1-6)	99.0	1.0
Dade	600	0	600	Reg.	600	1	665 (1-6)	99.0	1.0
Douglas	1230	2	1290	Reg.	1290	2	1400 (1-6)	2.0	98.0
Dunbar	1200	0	1200	Reg.	1200	5	1015 (1-6)	7.0	93.0
Darlington Hts.	840	0	840	Reg.	840		920 (1-6)	2.0	98.0
Flagler	600	2	660	Reg.	660	2	700 (1-6)	92.0	8.0
Floyd Hts.	810	0	810	Reg.	810		835 (1-6)	0	100.0
Kensington Park	1110	2	1170	Reg.	1170		1200 (1-6)	99.0	1.0
Key Biscayne	600	0	600	Reg.	600		560 (1-6)	100.0	0
Kinloch Park	600	2	660	Reg.	660	2	600 (1-6)	100.0	0
Melrose	840	0	840	Reg.	840		840 (1-6)	55.0	45.0
Merrick	600	0	600	Reg.	600	0	460 (1-6)	100.0	0
[illegible]ramar	450	0	450	Reg.	450	5	500 (1-6)	80.0	20.0
Pharr, K.	840	0	840	Reg.	840		850 (1-6)	0	100.0
Riverside	1230	13	1620	Reg.	1620	13	1940 (1-6)	99.0	1.0
Santa Clara	690	2	750	Reg.	750	4	695 (1-6)	75.0	25.0
Shenandoah	780	8	1020	Reg.	1020	8	1050 (1-6)	100.0	0
Silver Bluff	750	0	750	Reg.	750		750 (1-6)	100.0	0
Southside	330	1	360	Reg.	360	1	350 (1-6)	98.0	2.0
Sunset	840	2	900	Reg.	900	6	925 (1-6)	92.0	8.0
Tucker, F.S.	630	5	780	Reg.	780	6	590 (1-4)	0	100.0
W. Dunbar	840	0	840	Reg.	840		760 (1-6)	85.0	15.0
Wheatley	1020	2	1080	Reg.	1080	2	1005 (1-6)	0	100.0

/a Non-portable frame classroom.

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SOUTH CENTRAL DISTRICT (Cont.)

PLANNED HOUSING OF PUPILS FOR 1970-71

SCHOOL	DESIGNED CAPACITY	PORTABLES ON SITE	CAPACITY WITH PORTABLES	TYPE OF SCHED.	MODIFIED CAPACITY	*PORTABLE MAXIMUM ON SITE	ESTIMATED MEMBERSHIP	ESTIMATED RACIAL COMPOSITION % WHITE	% N.
Allapattah Jr.	1499	0	1499	Reg.	1499		1480 (6-9)	0	100.0
Brownsville Jr.	1301	0	1301	Reg.	1301		1440 (7-9)	0	100.0
Carver Jr.	791	2	851	Reg.	851	6	875 (7)	76.0	24.0
Citrus Grove Jr.	933	0	933	10-Hr.	1632	0	1679 (7-9)	100.0	0
Kinloch Park Jr.	1422	6	1622	Mod	1936	6	1620 (7-9)	100.0	0
Lee, Robert E. Jr.	1096	3	1186	Reg.	1186	3	1200 (7-9)	65.0	35.0
Merritt Jr.	791	0	791	Reg.	791	0	1005 (7-9)	100.0	0
Ponce de Leon Jr.	1613	0	1613	Reg.	1613		1734 (7-9)	74.0	26.0
Shenandoah Jr.	1511	5	1661	Mod	2012	5	1778 (7-9)	99.0	1.0
Washington, B.T. Jr.	2205	0	2205	Reg.	2205		1870 (7-9)	12.0	88.0
Coral Gables Sr.	2804	0	2804	10-Hr.	4907		3400 (10-12)	86.0	14.0
Miami Jackson	2445	0	2445	Reg.	2445	0	2580 (10-12)	15.0	85.0
Miami Sr.	3266	0	3266	10-Hr.	5715	0	4525 (10-12)	95.0	5.0

SOUTHWEST DISTRICT

PLANNED HOUSING OF PUPILS FOR 1970-71

SCHOOL	DESIGNED CAPACITY	PORTABLES ON SITE	CAPACITY WITH PORTABLES	TYPE OF SCHED.	MODIFIED CAPACITY	*PORTABLE MAXIMUM ON SITE	ESTIMATED MEMBERSHIP	ESTIMATED RACIAL COMPOSITION % WHITE	% BLACK
Banyan	750	0	750	Reg.	750		760 (1-6)	100	0
Blue Lakes	930	1	960	Reg.	960		1170 (1-6)	100	0
Coral Park	780	3	870	Reg.	870		1010 (1-6)	100	0
Coral Terrace	600	2	660	Reg.	660	4	680 (1-6)	100	0
Cypress	780	3	870	Reg.	870		945 (1-6)	100	0
Emerson	840	2	900	Reg.	900		850 (1-6)	100	0
Everglades	930	0	930	Reg.	930		970 (1-6)	100	0
Fairchild	660	1	690	Reg.	690		720 (1-6)	86	14
Fairlawn	840	0	840	Reg.	840	0	795 (1-6)	98	2
Flamami	720	0	720	Reg.	720		760 (1-6)	100	0
Greenglade	600	0	600	Reg.	600		530 (1-6)	100	0
Kendale	600	7	810	Reg.	810		880 (1-6)	100	0
Kenwood	570	11	900	Reg.	900		930 (1-6)	100	0
Ludlum	630	1	660	Reg.	660		650 (1-6)	62	38
Martin	810	5	960	Reg.	960		1025 (1-6)	0	100
Olympia	780	3	870	Reg.	870		845 (1-6)	100	0
Rockway	780	0	780	Reg.	780		775 (1-6)	100	0
Royal Palm	750	0	750	Reg.	750		760 (1-6)	100	0
Seminole	660	3	750	Reg.	750		810 (1-6)	100	0
Shenandoah	600	6	780	Reg.	780		800 (1-6)	100	0
South Miami	660	1	690	Reg.	690		720 (1-6)	72	28
Sylvania Heights	720	0	780	Reg.	780		695 (1-6)	100	0
Tropical	1032	2	1092	Reg.	1092		1200 (1-6)	100	0
Village Green	570	11	900	Reg.	900		905 (1-6)	100	0
Vineland	780	10	1080	Reg.	1080		1200 (1-6)	96	4
Glades Jr.	1323	0	1323	10-Hr.	2315		1360 (7-9)	99	1
Richmond Heights Jr.	1323	0	1323	10-Hr.	2315		1370 (6-9)	39	61
Riviera Jr.	1526	0	1526	10-Hr.	2670		2160 (7-9)	99	1
Rockway Jr.	1687	0	1687	10-Hr.	2952		2050 (7-9)	100	0
South Miami Jr.	1225	0	1225	10-Hr.	2143		1510 (7-9)	87	13
West Miami Jr.	1721	0	1721	Mod.	2243		1325 (7-9	100	0
Miami Coral Park Sr.	2569	0	2569	10-Hr.	4495		3600 (10-12)	100	0
Miami Killian Sr.	2702	0	2702	10-Hr.	4728		3200 (9-12)	83	17
Southwest Miami Sr.	2889	0	2889	10-Hr.	5055		3715 (10-12)	96	4

SOUTH DISTRICT

PLANNED HOUSING OF PUPILS FOR 1970-71

SCHOOL	DESIGNED CAPACITY	PORTABLES ON SITE	CAPACITY WITH PORTABLES	TYPE OF SCHED.	MODIFIED CAPACITY	*PORTABLE MAXIMUM ON SITE	ESTIMATED MEMBERSHIP	ESTIMATED RACIAL COMPOSITION % WHITE	% BLACK
Air Base	990	10	1290	Reg.	1290		1300 (1-6)	90	10
Avocado	600	0	600	Reg.	600		610 (1-6)	100	0
Bel Aire	600	0	600	Reg.	600		550 (1-4)	54	46
Caribbean	840	0	840	Reg.	840		725 (1-6)	58	42
Colonial Drive	720	0	720	Reg.	720		200 (1-6)	73	27
Cooper, M.K.	690	0	690	Reg.	690	0	675 (1-6)	84	16
Coral Reef	780	7	990	Reg.	990		975 (1-6)	100	0
Cutler Ridge	1080	0	1080	Reg.	1080		1040 (1-6)	99	1
Florida City	360	3	450	Reg.	450		450 (1-6)	89	11
Goulds	360	0	360	Reg.	360		350 (1-6)	20	80
Gulfstream	600	1	630	Reg.	630		520 (1-6)	97	3
Howard Drive	780	2	840	Reg.	840		925 (1-6)	100	0
Leisure City	600	12	960	Reg.	960		900 (1-6)	100	0
Lewis, A.L.	600	3/a	690	Reg.	690	3	600 (1-6)	3	97
Miami Hts.	930	0	930	Reg.	930		900 (1-6)	99	1
Moton, R.R.	810	0	810	Reg.	810		500 (1-6)	58	42
Naranja	600	0	600	Reg.	600		525 (1-6)	45	55
Palmetto	780	5	930	Reg.	930	5	1000 (1-6)	100	0
Perrine	420	0	420	Reg.	420		340 (1-4)	64	36
Pinecrest	780	5	930	Reg.	930		900 (1-6)	100	0
Pine Villa	780	9	1050	Reg.	1050		825 (1-6)	8	92
Redland	720	3	810	Reg.	810		625 (1-6)	95	5
Redondo	360	1	390	Reg.	390		400 (1-6)	100	0
Richmond	570	0	570	Reg.	570		600 (1-6)	23	77
South Miami Hts.	960	6	1140	Reg.	1140		900 (1-6)	100	0
W. Homestead	600	5	750	Reg.	750		790 (1-6)	14	86
Whispering Pines	840	0	840	Reg.	840		675 (1-6)	100	0
Cutler Ridge Jr.	1579	5	1729	Mod	2083		1975 (7-9)	80	20
Homestead Jr.	1334	0	1334	Reg.	1334		1500 (7-9)	62	38
Mays Jr.	1476	2	1536	Mod	1975		1750 (7-9)	58	42
Palmetto Jr.	1442	7	1652	Mod	1934		2005 (7-9)	99	1
Redland Jr.	506	8	826	Reg.	826		825 (7-9)	80	20
Miami Palmetto Sr.	2787	0	2787	10-Hr.	4877		3850 (10-12)	92	8
South Dade Sr.	1900	1	1930	10-Hr.	3325		2350 (10-12)	75	25

a Non-portable fr...

EXHIBIT 2

PROPOSED PUPIL ATTENDANCE

The attached table reflects the proposed pupil membership and racial composition according to the School Board plan as modified by the Court in selected schools. The compilation includes the breakdown by grade level and race as projected for the 1970-71 school year. The schools included are those in the HEW report and those schools as requested by the Court.

EXHIBIT 2
July 17, 1970
Response to Court Order
of July 10, 1970

PROPOSED PUPIL MEMBERSHIP AND RACIAL COMPOSITION

1970-71

ELEMENTARY

SCHOOL	GRADE 1		GRADE 2		GRADE 3		GRADE 4		GRADE 5		GRADE 6		TOTAL ELEMENTARY		
	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMPOSITION WHITE	BLACK
Allapattah	234	98%	234	100%	219	100%	250	100%	233	99%			1,170	1%	99%
Arcola Lake	137	90%	137	80%	140	87%	147	88%	150	96%	129	93%	840	12%	88%
[illegible]	103	0%	107	0%	99	0%	95	0%	107	0%	99	0%	610	100%	0%
Bel-[illegible]re	114	55%	140	42%	147	40%	149	49%					550	54%	46%
Bethune	254	52%	275	54%	311	53%							840	47%	53%
Blenton	145	12%	135	14%	126	15%	130	16%	127	13%	112	13%	775	87%	13%
Broadmoor	347	50%	361	45%	282	45%							990	54%	46%
Buena Vista	176	8%	176	6%	121	9%	99	5%	83	9%	95	7%	750	93%	7%
Bunche Park	150	100%	120	100%	150	100%	150	100%	150	100%	120	100%	840	0%	100%
Carver, G. W.	127	100%	127	100%	76	100%	86	100%	*82	100%	*95	100%	*593	0%	100%
Colonial Drive	120	33%	123	25%	115	28%	127	31%	120	26%	115	17%	720	73%	27%
Comstock	259	1%	257	1%	251	1%	258	1%	212	1%	213	1%	1,450	99%	1%
Cooper, N. K.	109	18%	142	17%	118	16%	110	16%	103	15%	93	14%	675	84%	16%
Coral Gables	105	0%	105	0%	114	0%	125	0%	120	0%	136	0%	705	100%	0%
Curtiss, Glenn	75	0%	76	0%	90	1%	108	1%	115	1%	106	1%	570	100%	0%
Dade	127	1%	127	1%	109	1%	107	1%	95	1%	100	0%	665	99%	1%
Douglas	284	99%	267	98%	252	98%	197	98%	202	98%	198	98%	1,400	2%	98%
Drew, C. R.	140	100%	160	100%	150	100%	170	100%	155	100%	120	100%	895	0%	100%
[illegible]	195	94%	195	99%	169	92%	150	92%	164	93%	142	93%	1,015	7%	93%
[illegible]lington Hts.	171	98%	165	98%	148	98%	145	98%	146	98%	145	98%	920	2%	98%
Edison Park	172	55%	171	52%	179	52%	192	50%	171	53%			885	47%	53%
Evans, L. C.	180	100%	125	100%	170	100%	145	100%	180	100%	155	100%	955	0%	100%
Floral Hts.	144	100%	146	100%	150	100%	148	100%	135	100%	112	100%	835	0%	100%
Florida City	74	12%	77	12%	86	11%	74	10%	72	11%	67	10%	450	89%	11%
Gladeview	99	98%	98	98%	106	100%	96	100%	109	100%	127	96%	635	2%	98%
Hialeah	144	0%	145	0%	151	0%	161	0%	145	0%	151	0%	895	100%	0%
Holmes Complex	251	100%	235	100%	253	100%	292	100%	292	100%	252	100%	1,575	0%	100%
Lewis, A. L.	103	96%	110	95%	105	95%	99	96%	93	99%	90	100%	600	3%	97%
Liberty City	190	100%	150	100%	140	100%	150	100%	140	100%	150	100%	920	0%	100%
Little River	164	35%	164	37%	173	33%	200	38%	225	35%	174	35%	1,100	65%	35%

*Excludes fifth and sixth grade pupils transferred to F. S. Tucker Elementary.

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PROPOSED PUPIL MEMBERSHIP AND RACIAL COMPOSITION--CONT'D.

1970-71

ELEMENTARY

SCHOOL	GRADE 1 EST. MEMB.	GRADE 1 RACIAL COMP. BLACK	GRADE 2 EST. MEMB.	GRADE 2 RACIAL COMP. BLACK	GRADE 3 EST. MEMB.	GRADE 3 RACIAL COMP. BLACK	GRADE 4 EST. MEMB.	GRADE 4 RACIAL COMP. BLACK	GRADE 5 EST. MEMB.	GRADE 5 RACIAL COMP. BLACK	GRADE 6 EST. MEMB.	GRADE 6 RACIAL COMP. BLACK	TOTAL ELEMENTARY EST. MEMB.	TOTAL ELEMENTARY RACIAL COMPOSITION WHITE	TOTAL ELEMENTARY RACIAL COMPOSITION BLACK
[illegible] Park	108	100%	108	100%	125	100%	140	100%	117	100%	142	100%	740	0%	100%
[illegible] F. C.	210	100%	215	100%	205	100%	170	100%	225	100%			1,025	0%	100%
elrose							290	43%	300	46%	250	47%	840	55%	45%
iami Park	190	22%	170	21%	185	16%	180	16%	195	12%	160	16%	1,080	80%	20%
ramer	103	24%	102	14%	96	28%	83	12%	57	24%	59	22%	500	80%	20%
ston, R. R.									252	40%	248	43%	500	53%	47%
orth County	178	90%	178	90%	159	86%	159	87%	144	91%	162	85%	980	12%	88%
linda	115	100%	140	100%	140	100%	145	100%	140	100%	145	100%	825	0%	100%
pa-locka	120	40%	189	38%	146	38%	200	42%	185	37%	185	33%	1,025	62%	38%
rchard Villa	215	100%	218	100%	200	100%	205	100%	207	100%	185	100%	1,230	0%	100%
arkview	90	2%	92	2%	90	2%	88	2%	93	2%	62	2%	515	98%	2%
errine	79	38%	83	39%	84	35%	94	35%					340	64%	36%
harr, Kelsey	113	100%	125	100%	142	100%	160	100%	174	100%	136	100%	850	0%	100%
ire Villa	110	91%	130	93%	140	93%	150	94%	145	90%	150	93%	825	8%	92%
pinciana Park	170	100%	190	100%	205	100%	245	100%	190	100%	220	100%	1,220	0%	100%
ainbow Park	115	41%	120	45%	100	42%	110	42%	98	39%	107	40%	650	59%	41%
efond[illegible]	81	0%	73	0%	81	0%	55	0%	61	0%	49	0%	400	100%	0%
[illegible]e	363	1%	361	1%	354	1%	294	1%	247	1%	321	1%	1,940	99%	1%
anta Clara	127	26%	142	14%	142	25%	99	30%	91	33%	94	29%	695	75%	25%
cott Lake	125	1%	140	2%	135	1%	140	1%	145	1%	165	1%	850	99%	1%
unset	150	8%	156	6%	138	9%	165	7%	168	8%	148	8%	925	92%	8%
ucker, F. S.	146	100%	147	100%	142	100%	155	100%	*63	100%	*59	100%	*712	0%	100%
est Dunbar	61	32%	61	32%	69	29%	180	11%	201	10%	188	11%	760	85%	15%
est Homestead	139	87%	138	86%	131	86%	130	86%	114	84%	138	85%	790	14%	86%
est Little River							323	54%	296	50%	321	51%	940	49%	51%
estview	90	0%	110	0%	130	0%	120	0%	125	0%	110	0%	685	100%	0%
heatley, Phyllis	172	99%	107	100%	135	99%	147	100%	123	100%	321	100%	1,005	0%	100%
oung, Nathan	95	85%	96	85%	96	85%	65	85%	95	85%	63	85%	510	15%	85%

Includes fifth and sixth grade pupils from G. W. Carver Elementary.

PROPOSED PUPIL MEMBERSHIP AND RACIAL COMPOSITION--CONT'D.

1970-71

JUNIOR HIGH

SCHOOL	GRADE 5 EST. MEMB.	GRADE 5 RACIAL COMP. BLACK	GRADE 6 EST. MEMB.	GRADE 6 RACIAL COMP. BLACK	GRADE 7 EST. MEMB.	GRADE 7 RACIAL COMP. BLACK	GRADE 8 EST. MEMB.	GRADE 8 RACIAL COMP. BLACK	GRADE 9 EST. MEMB.	GRADE 9 RACIAL COMP. BLACK	TOTAL JUNIOR HIGH EST. MEMB.	TOTAL JUNIOR HIGH RACIAL COMPOSITION WHITE	TOTAL JUNIOR HIGH RACIAL COMPOSITION BLACK
[illegible]sh Jr.			275	100%	400	100%	380	100%	425	100%	1,480	0%	100%
[illegible]owns[illegible]ile Jr.					560	100%	435	100%	445	100%	1,440	0%	100%
arol City Jr.					670	24%	580	26%	525	21%	1,775	77%	23%
arver Jr.					875	24%					875	76%	24%
Citrus Grove Jr.					560	0%	555	0%	564	0%	1,679	100%	0%
Cutler Ridge Jr.					729	18%	659	20%	587	21%	1,975	80%	20%
Drew, C. R. Jr.					652	100%	613	100%	285	100%	1,550	0%	100%
Filler, H. H. Jr.					650	9%	635	9%	645	8%	1,930	91%	9%
Fisher, Ida M. Jr.					272	27%	264	28%	254	23%	790	74%	26%
Ge, R. E. Jr.					470	33%	400	36%	330	33%	1,200	65%	35%
Gidison Jr.					602	66%	572	59%	232	71%	1,406	50%	50%
Gunn, H. Jr.					577	26%	501	26%	192	11%	1,270	76%	24%
Hays Jr.					645	42%	588	43%	517	41%	1,750	58%	42%
Herritt, Ada Jr.					320	0%	345	0%	340	0%	1,005	100%	0%
Miami Edison Middle			330	58%	475	60%	440	62%			1,245	40%	60%
Miami Springs Jr.					490	16%	535	22%	540	17%	1,565	82%	18%
[illegible] Jr.					598	7%	492	11%	485	11%	1,475	90%	10%
[illegible]ade Jr.					548	67%	524	68%	498	68%	1,570	32%	68%
Palmetto Jr.					693	2%	669	1%	643	1%	2,005	99%	1%
Palm Springs Jr.					500	0%	590	0%	760	0%	1,850	100%	0%
Parkway Jr.					545	21%	570	20%	530	20%	1,645	80%	20%
Ponce de Leon Jr.							856	28%	898	24%	1,754	74%	26%
Richmond Hts. Jr.			209	100%	565	56%	535	54%	561	57%	1,870	39%	61%
Shenandoah Jr.					612	1%	594	1%	572	1%	1,778	99%	1%
Washington, B. T. Jr.					730	90%	600	89%	540	85%	1,870	12%	88%

PROPOSED PUPIL MEMBERSHIP AND RACIAL COMPOSITION--CONT'D.

1970-71

SENIOR HIGH

SCHOOL	GRADE 9 EST. MEMB.	GRADE 9 RACIAL COMP. BLACK	GRADE 10 EST. MEMB.	GRADE 10 RACIAL COMP. BLACK	GRADE 11 EST. MEMB.	GRADE 11 RACIAL COMP. BLACK	GRADE 12 EST. MEMB.	GRADE 12 RACIAL COMP. BLACK	TOTAL SENIOR HIGH EST. MEMB.	TOTAL SENIOR HIGH RACIAL COMPOSITION WHITE	TOTAL SENIOR HIGH RACIAL COMPOSITION BLACK
[illegible] Sr.	190	0%	1748	0%	1468	0%	1169	0%	4,575	99%	1%
Miami Central Sr.	552	44%	1090	24%	881	30%	677	28%	3,200	70%	30%
Miami Edison Sr.	453	25%	783	23%	629	27%	482	34%	2,347	73%	27%
Miami Jackson Sr.			1020	75%	867	93%	693	91%	2,580	15%	85%
Miami Northwestern Sr.	232	100%	1050	100%	813	100%	595	100%	2,690	0%	100%
Miami Sr. High			1581	11%	1547	2%	1397	1%	4,525	95%	5%
Miami Springs Sr.	705	16%	1088	12%	975	5%	802	3%	3,570	91%	9%

EXHIBIT 2
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 3

List of Elementary Schools which Have Significant Enrollments

In

English as a Second Language, and/or Spanish for

Spanish Speaking Pupils

NORTHEAST DISTRICT

SCHOOL

Biscayne
Flenberg

NORTH CENTRAL DISTRICT

Blanton
Bright
Miami Park
Morningside
Broadmoor
Hialeah
Johnson
Little River
Shadowlawn
South Hialeah

NORTH WEST DISTRICT

DuPuis
Flamingo
Meadowlane
Milam
North Hialeah
Earhart
Myrtle Grove
North Glade
Walters

SOUTH CENTRAL DISTRICT

SCHOOL

Auburndale
Key Biscayne
Kinloch Park
Melrose
Merrick
Riverside
Silver Bluff
West Dunbar
Buena Vista
Citrus Grove
Comstock
Coral Way
Dade
Flagler
Kensington Park
Miramar
Santa Clara
Shenandoah
Southside

SOUTHWEST DISTRICT

Coral Park
Everglades
Fairlawn
Rockway
Sylvania Hgts.
Banyan
Emerson
Flagami
Greenglade
Tropical

EXHIBIT 3

List of Secondar Schools which Have Significar Enrollments

In

English as a Second Language, and/or Spanish for

Spanish Speaking Pupils

SCHOOL

Citrus Grove
Coral Gables Sr.
Filer Jr.
Fisher Jr.
Hialeah Jr.
Hialeah Sr.
Kinloch Park Jr.
Robert E. Lee Jr.
Merritt Jr.
Coral Park Sr.
Edison Jr.
Edison Sr.
Miami Sr.
Miami Springs Jr.
Miami Springs Sr.
Nautilus Jr.
Palm Springs Jr.
Ponce de leon Jr.
Rockway Jr.
Shenandoah Jr.
West Miami Jr.
Westview Jr.

EXHIBIT 3
July 17, 1970

Response to Court
Order of July 10, 1970

EXHIBIT 4

EXPLANATION OF SPECIAL PROGRAMS OFFERED TO DISADVANTAGED PUPILS
LIST OF SCHOOLS HAVING SUCH PROGRAMS ATTACHED

1. PLAD - Title I, E.S.E.A.

Project Language Arts Development (PLAD) is a program designed to assist 5,000 specifically identified educationally disadvantaged pupils in first and second grades. The project seeks to improve their performance in the use of language arts skills, i.e.; reading, oral communication and language concepts. The programs have been designed by schools for individual pupils in addition to district wide plans which have been written at the district level. This project is administered by the districts via schools and include Northwest, North Central, South Central, South, and Southwest districts. This program operated in thirty-one schools in 1969 with six and seven year olds, serving approximately 5,000 children.

2. Curriculum Guidance - Project Title I, E.S.E.A.

This program is designed to provide support for individual and group counseling experiences, corrective and remedial reading skills,

Explanation of Special Programs Continued

and the development of an intellectual skills curriculum. Fifteen secondary schools are included in this program involving five districts in the county. The project serves 1,800 children specifically identified in grades 6 through 10.

3. Mobile Reading Centers - Title I, E.S.E.A. — These mobile centers provide selected boys and girls living in disadvantaged areas who have serious reading problems with intensive diagnostic and remedial reading services. These children would not ordinarily have an opportunity for individualized assistance in reading. The project serves approximately 450 children.

4. Migrant Children - Title I, E.S.E.A. — This program provides special services, materials and instruction for disadvantaged migrant children. Included in this program are pre-kindergarten children for a total population to be served in the program of approximately 1,700 children. Special Services such as visiting teachers, community school, reading teachers and keeping migrant records are also included in the project.

Explanation of Special Programs Continued

This program also involves cooperative efforts from several community agencies.

5. Talent Development Program - Title VIII, E.S.E.A.

This project, one of ten in the nation, is designed to prevent student dropout with special components for developing individual student talents. Included in this program are emphases on vocational and technical education, individualized instruction, talent identification, community education, behavior modification, and practical arts. The program operates currently in the Model Cities area in six schools; Northwestern Senior High School, Drew Junior High School, Drew Elementary, Evans Elementary, Holmes Elementary and Primary "C", serving approximately 5,000 students.

6. Head Start - Economic Opportunity Act, 1964

A program designed to provide experiences not normally available in their home situation for disadvantaged five-year olds in economically deprived neighborhoods. This program, operated through the E.O.P.I., serves approximately 3,000 economically disadvantaged children. Included in the services provided are psychological services, social services, nutritional services and parent involvement.

Explanation of Special Programs Continued

7. Follow Through - Economic Opportunity Act, 1964	A program of comprehensive services in the primary grades for children ages six, through nine designed to provide continuity to the gains of the Head Start Program. A total of 580 children are participating in the program.
8. Neighborhood Youth Corps - Economic Opportunity Act, 1964	A program which provides for employment opportunities for disadvantaged youth to work part time in the schools, public agencies, and non-profit agencies. A total of 1,210 students are involved in this program.

EXHIBIT 4
July 17, 1970

Response to Court
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1. PLADS PROGRAM - SCHOOLS

Bethune Elementary
Buena Vista Elementary
George W. Carver Elementary
Douglas Elementary
Charles R. Drew Elementary
Dunbar Elementary
Harlington Heights Elementary
Lillie C. Evans Elementary
Floral Heights Elementary
Gladeview Elementary
Goulds Elementary
Holmes Elementary
J. W. Johnson Elementary
A. L. Lewis Elementary
Liberty City Elementary
Loral Park Elementary
Miramar Elementary
R. R. Moton Elementary
Naranja Elementary
Orchard Villa Elementary
Kelsey Pharr Elementary
Pine Villa Elementary
Poinciana Park Elementary
Rainbow Park Elementary
Richmond Elementary
Francis S. Tucker Elementary
West Homestead Elementary
West Little River Elementary
Phyllis Wheatley Elementary
Nathan Young Elementary

2. CURRICULUM GUIDANCE PROJECT SCHOOLS

Secondary Schools

Charles R. Drew Jr.
Miami Edison Jr.
Miami Northwestern Sr.
North Dade Sr.
Homestead Jr.
Mays Jr/Sr.
Allapattah Jr.
Brownsville Jr.
George W. Carver Jr.
Robert E. Lee Jr.
Ada Merritt Jr.
Miami Jackson Jr/Sr.
Booker T. Washington Jr.
Richmond Heights Jr.
Silver Oaks Jr./Sr.

3. MOBILE READING CENTERS

Schools Served:

Bethune Elementary
Barlington Heights Elementary
Evans Elementary
Floral Heights Elementary
Gladeview Elementary
Holmes Elementary
Kelsey Pharr Elementary
Orchard Villa Elementary
Poinciana Park Elementary
Naranja Elementary

4. MIGRANT PROGRAM

Schools Served:

N. K. Cooper Elementary
Florida City Elementary
Leisure City Elementary
Naranja Elementary
Redland Elementary
Homestead Jr.
Redland Jr.

Pre-Kindergarten Trailers

Princeton Labor Camp
Redland Labor Camp
South Dade Labor Camp

5. TALENT DEVELOPMENT PROGRAM

Schools Served:

Northwestern Senior
Drew Junior
Drew Elementary
Evans Elementary
Holmes Elementary
Primary "C"

#6 HEAD START SCHOOL CENTERS

1. Bethune
2. Bunche Park
3. Geo. W. Carver
4. Comstock
5. Neva King Cooper
6. Douglas
7. Charles R. Drew
8. Dunbar
9. Earlington Heights
10. Lillie C. Evans
11. Floral Heights
12. Florida City
13. Fulford
14. Gladeview
15. Goulds
16. Holmes
17. J. W. Johnson
18. Leisure City
19. A. L. Lewis
20. Liberty City
21. Little River
22. Lorah Park
23. Miramar
24. R. R. Moton
25. Naranja
26. Orchard Villa
27. Perrine
28. Pine Villa
29. Poinciana Park
30. Primary School C
31. Rainbow Park
32. Redland
33. Richmond
34. F. S. Tucker
35. West Dunbar
36. West Homestead
37. Nathan Young

7. FOLLOW THROUGH

Little River Elementary

8. NEIGHBORHOOD YOUTH CORPS

Allapattah Jr.
Brownsville Jr.
Carol City Jr.
G. W. Carver Jr.
Citrus Grove Jr.
C.O.P.E. Center
Coral Gables Sr.
Cutler Ridge Jr.
Dorsey Jr.
C. R. Drew Jr.
Henry H. Filer Jr.
Hialeah Jr.
Hialeah Sr.
Jr. High Opportunity
Kinloch Park Jr.
Robert E. Lee Jr.
Douglas MacArthur
Mays Jr.
Ada Merritt Jr.
Miami Carol City Sr.
Miami Central Sr.
Miami Coral Park Sr.
Miami Edison Middle
Miami Jackson Sr.
Miami Killian Sr.
Miami Norland Sr.
Miami Northwestern Sr.
Miami Palmetto Sr.
Miami Senior
Miami Springs Jr.
Miami Springs Sr.
North Dade Jr.
North Miami Sr.
Palmetto Jr.
Ponce De Leon Jr.
Redland Jr.
Richmond Heights Jr.
Shenandoah Jr.
South Dade Sr.
Southwest Miami Sr.
B. T. Washington Jr.

* Miami Edison Sr.

EXHIBIT 5

EXPLANATION OF GRADED AND NONGRADED SCHOOLS

Within the setting of American public education, the terms graded school and nongraded school both indicate systems of vertical organization design for segmenting of school programs and the placement of students.

The graded elementary school, customarily found in a grade 1-6 or K-6 arrangement, establishes typical, predictable standards of chronological age and achievement comparison for initial placement and orderly progression of large numbers of students. Traditional expectations of success are based on average learning capacity; students progress by way of grade-level texts and grade-level subject matter to promotion, or failure, at the conclusion of each formal division or grade level.

The nongraded elementary school removes formal grade barriers and substitutes a flexible series or progress levels for the various curriculum areas within the school program. An appropriate range of textbooks and materials is utilized, without concern for subject matter being reserved for a higher or a lower "grade." With specific grade labels removed, an individual student may proceed at his own pace, progressing at different rates in different subjects and always according to his own individual development. A minimal threat of failure exists in the nongraded school because a student advances through the complete school program measured in terms of his own performance rather than in any end-of-year promotion, or failure, on a class or grade-level basis.

EXHIBIT 5
July 17, 1970

Response to Court
Order of July 10, 1970

EXHIBIT G

THE PAIRING OF A. L. LEWIS AND N. K. COOPER ELEMENTARY SCHOOLS

As shown in the table below, the pairing of A. L. Lewis and N. K. Cooper Elementary Schools would result in both schools having a racial composition that would be predominantly white. (Lewis 48% black; Cooper 46% black.)

Further, the table reveals that the Lewis school would be 12 pupils under capacity while the Cooper school would be 12 above capacity.

Busing of pupils would not be greatly affected by this plan.

The primary objection to this plan is that pupils will have to cross Emory Drive, a busy thoroughfare, and walk down streets without sidewalks.

Grade Level Breakdown

Grade	A. L. Lewis		N. K. Cooper	
1	98		127	
2	110	317	139	370
3	109		104	
4	99		106	
5	93	283	99	305
6	91		100	
Total	600		675	

By placing grades 1, 2, 3 in N. K. Cooper and grades 4, 5, 6 in A. L. Lewis the following would result:

School	Grades	Pupils	Racial Balance	Relation to Capacity
A. L. Lewis	4, 5, 6	588	48% B	12 under capacity
N. K. Cooper	1, 2, 3	687	46% B	12 over capacity

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EXHIBIT G
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 7

THE PAIRING OF FLORIDA CITY ELEMENTARY SCHOOL
AND WEST HOMESTEAD ELEMENTARY SCHOOL

As revealed in the tables below, West Homestead and Florida City Elementary Schools do not lend themselves to pairing. Regardless of the grade level combinations used, one school or the other is always from 7 to 10 classrooms above capacity; this is due to the difference in size of the two schools. Florida City Elementary is a 12 room school, West Homestead Elementary is a 20 room school.

The tables also reveal that any pairing combination results in both schools being predominantly black in racial composition.

There would be considerable cross-busing of students with the pairing of these two schools.

Grade Level Breakdown

Grade	Florida City	West Homestead
1	72	137
2	79	142
3	87	130
4	68	135
5	72	113
6	72	133
Totals	450	790

Results of Various Pairing Plans

School	Grades	Pupils	Racial Balance	Relation to Capacity
Florida City	1, 2, 3	647	63% B	over capacity 287
West Homestead	4, 5, 6	593	64% B	under capacity 7
Florida City	1, 2	430	65% B	over capacity 70
West Homestead	3, 4, 5, 6	810	63% B	over capacity 210
Florida City	5, 6	390	63% B	over capacity 30
West Homestead	1, 2, 3, 4	850	64% B	over capacity 250

EXHIBIT 7 183
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 8

THE REZONING OF A. L. LEWIS, N. K. COOPER, WEST HOMESTEAD, FLORIDA CITY, AND REDONDO ELEMENTARY SCHOOLS

The main disadvantage to the rezoning of the above mentioned schools is the varied population density surrounding each of the schools.

For instance, A. L. Lewis School has over 600 pupils residing within an area of only forty square blocks, and Redondo's population of approximately 400 pupils comes from an area covering about four square miles. The pupil population of the Cooper School and the Florida City School is dispersed in a manner similar to that of Redondo.

Moving pupils from one zone to another creates the problem of establishing a boundary line adjacent to the school building itself. For instance, to put another 100 Black pupils in N. K. Cooper from A. L. Lewis, Lewis' northern boundary would be moved south two blocks, making the line only one block from the Lewis site and the pupils would have to walk a mile and one-half to Cooper.

To replace the 100 Black pupils removed from Lewis with White pupils would require Florida City's northern boundary moved to a point south of that school which would result in pupils having to walk past Florida City School to reach Lewis.

Similar complications would result in moving pupils from West Homestead to Florida City, Redondo, or Cooper and vice versa.

Every conceivable rezoning plan has been studied without revealing any plan that adequately desegregates the schools.

EXHIBIT 8
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 9

ALLAPATTAH AND SANTA CLARA ELEMENTARY SCHOOLS

If these two schools were paired, the racial ratio would be approximately 65 percent Black and 35 percent White. This was found to be undesirable in previous experience with pairing.

In addition, Allapattah houses only grades 1-5 and Santa Clara houses grades 1-6. This would create some special problems. If the sixth grade of Santa Clara had to be placed at Allapattah Junior High School, which houses the sixth grade of Allapattah Elementary, it would mean they would attend this school for only one year and then proceed to the junior high school in their area, which would be Robert E. Lee Junior High School.

The pupil population of Santa Clara Elementary School is 75 percent Spanish language origin. This requires special programs for the newly arrived Cuban refugee pupils as well as those pupils that are continuing to learn English as a second language. Pairing these schools would require a duplication of and an increase of

special service personnel to provide the necessary programs.

Santa Clara Elementary also is the only southern component involved in the Southeastern Educational Laboratory Project. This is a Federal program dealing with the teaching of reading to primary children. Three teachers and the principal will go to Atlanta in August for special training in the use of S. E. L. materials.

Pupils walking between either Allapattah area or the Santa Clara area will be forced to cross heavily travelled 36th Street. They will also have to use the underpass of the Airport Expressway with both approaches and exits at N. W. 12th Avenue.

Upon consideration of all of this data, it does not seem feasible to pair Allapattah Elementary and Santa Clara Elementary.

EXHIBIT 9
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 10

DUNBAR AND BUENA VISTA
ELEMENTARY SCHOOLS

Attached is a chart showing the 1970-71 Board Plan, the plan recommended by the Department of Health, Education and Welfare, and pairing of the two schools as suggested in the July 10, 1970 Supplemental Report of the Court.

It is apparent from these figures that while the racial balance of the two schools is 51 percent Black and 49 percent White, the pairing of the schools would present other problems. Buena Vista is a school with 88% Spanish language origin. This requires special programs for the newly arrived Cuban refugee pupils as well as those pupils that are continuing to learn English as a second language. Pairing these schools would require a duplication of and an increase of special service personnel to provide the necessary programs.

Dunbar Elementary is located in the center of the Urban Renewal Project. Reports indicate that during the next year approximately 600 housing units will be completed. It is estimated that each unit will accommodate a family with two or three children. At least two-thirds of the children will be of school age. The large influx of black elementary pupils will certainly increase the ratio of black to white.

It should further be noted that pupils going from Dunbar to Buena Vista and many pupils walking from Buena Vista to Dunbar add heavily traveled N. W. 29th Street and N. W. 2nd Avenue to the other busy thoroughfares they must cross. Both of these streets are zoned for business as are several of the adjacent streets.

The pairing of Dunbar and Buena Vista does not seem advisable for the above listed reasons.

EXHIBIT 10
July 17, 1970
Response to Court Order
of July 10, 1970

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Buena Vista	1-6	697*	53	750	7	660
Dunbar	1-6	71	944	1015	93	1200
TOTALS		768	997	1765	51	1860

*The native language of 88% of the Buena Vista white pupil population is Spanish.

1970-71 HEW RECOMMENDED PLAN

School	Grade	W	B	T	%B	Capacity
Dunbar	4-6	584	548	1132	48	1200
Miramar	1-3	234	220	454	48	450
Buena Vista	1-3	350	329	679	48	660
TOTALS		1168	1097	2265	48	2310

SUGGESTED PAIRING BY COURT*

School	Grade	W	B	T	%B	Capacity
Buena Vista	4-6	286	423	709	59	660
Dunbar	1-3	482	574	1056	54	1200
TOTALS		768	997	1765	51	1860

*Difference in these figures is reflected since HEW Plan included Miramar.

EXHIBIT 11

WHEATLEY AND MIRAMAR ELEMENTARY SCHOOLS

The attached chart shows the Board Plan and a plan for the pairing of Wheatley and Miramar as suggested by the Court in the July 10, 1970 Supplemental Report. As is noted, the racial balance in these schools is 73% Black and 37% White.

Miramar's white population is 73% Spanish language origin. This requires special programs for the newly arrived Cuban refugee pupils as well as those pupils who are continuing to learn English as a second language. Pairing these schools would require a duplication of and an increase of special service personnel to provide the necessary programs.

The pairing of these schools will cause some pupils to walk a greater distance. All the pupils walking from the Miramar area to Wheatley and vice versa must cross three sets of railroad tracks and heavily traveled North Miami Avenue.

Consideration of the data noted above indicates that the Board plan could be best implemented.

EXHIBIT 11
July 17, 1970
Response to Court Order
of July 10, 1970

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Miramar	1-6	400*	100	500	20	450
Wheatley	1-6	4	1001	1005	100	1020
TOTALS		404	1101	1505	73	1470

*The native language of 73% of the Miramar white pupil population is Spanish.

SUGGESTED PAIRING BY COURT

School	Grade	W	B	T	%B	Capacity
Miramar	5, 6	101	347	448	77	450
Wheatley	1-4	303	754	1057	71	1020
TOTALS		404	1101	1505	73	1470

EXHIBIT 12

ARCOLOA LAKE AND VAN E. BLANTON ELEMENTARY SCHOOLS

The proposal to pair Arcola Lake Elementary and Van E. Blanton Elementary Schools by rezoning both schools into one school attendance zone with grades 1, 2, and 3 in one school and grades 4, 5, and 6 in the other would be quite expensive and unsatisfactory. Arcola Lake Elementary School was opened in 1969-70. It is a special "pod type" school with a capacity of approximately 840 students. Van E. Blanton is a much older school with standard classrooms and facilities. If these schools were paired it would seem necessary to house the first three grades at Arcola Lake due to the new special facilities. Grades 4, 5, and 6 would logically be housed at Blanton.

Arcola Lake and Blanton schools are separated by a natural boundary line, the Little River Canal. The above plan would necessitate 6, 7, and 8 year old students walking around the Little River Canal either down N. W. 17th Avenue or N. W. 7th Avenue due to the fact that the only access across the canal is on the extreme east and the extreme west of each of the attendance areas. Northwest 7th Avenue, the east access, is a major traffic artery with commercial businesses on both sides. The west access, Northwest 17th Avenue, is a residential area. The area around the Little River Canal is considered a change area; Blacks are gradually moving into the area north of the Little River Canal and this is gradually increasing the Black percentage of population in the Blanton School. In turn, the area south of the Little River Canal is a White area that at this time seems to be stabilizing.

If these two schools were paired, it would result in many pupils walking a distance of a mile and one-half to two miles and would also require the busing of approximately 400 pupils who are presently not transported.

Both of these schools are presently integrated. It appears that the proportion of Black students attending Blanton is increasing at a very slow rate due to population changes in the neighborhood. The proposed pairing plan may result in an accelerated exodus of White population from the Blanton area. If this is so, resegregation will be the ultimate result.

EXHIBIT 12
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 13

HOLMES COMPLEX, LITTLE RIVER, AND EDISON PARK ELEMENTARY SCHOOLS

If these three schools are grouped, the existence of the natural barriers, especially the North-South Expressway, N. W. 7th Avenue, and the railroad, will necessitate children walking past each other to attend a school not in their own neighborhood. The grouping of these schools would result in the cross-walking of approximately 1000 pupils and the transportation of approximately 300 pupils in all three schools. The racial ratio of the total grouping would be approximately 66 per cent Black and 34 per cent White. This is considered to be undesirable as experienced in previous pairing.

The Little River School is located in a single-family residential section and at the present time has 35 per cent Black students. Any change in the boundary lines of this school to include more Black students would probably accelerate the White exodus from the area. There is a tendency at this time to stabilize.

Edison Park Elementary is also located in a single-family residential area east of the North-South Expressway. Edison Park is at present about 53 per cent Black. This school also is tending to stabilize its Black/White proportions. It is felt that an inclusion of a greater proportion of Black students in this school would probably accelerate the potential White exodus from this area.

The Holmes Complex which is 100 per cent Black is located on the west side of N. W. 7th Avenue and the

North-South Expressway. N. W. 7th Avenue is a natural barrier due to the heavy concentration of traffic and being a major traffic artery lined with commercial businesses.

EXHIBIT 13
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 14

LORAH PARK OR GLADEVIEW WITH HIALEAH ELEMENTARY SCHOOL

The pairing of Hialeah Elementary School with Gladeview Elementary or Lorah Park Elementary Schools would not be economically or educationally feasible.

Hialeah Elementary is located west of the Seaboard-Airline Railroad in a residential area. There is an industrial area approximately one-half mile wide adjacent to the Seaboard-Airline Railroad which runs north and south. This industrial area separates Hialeah Elementary School from Gladeview and Lorah Park Elementary Schools. The railroad, which bisects the industrial area, is the boundary line between the two schools. The distance from Gladeview and Lorah Park Elementary Schools to Hialeah Elementary School is approximately two miles. The access of Hialeah students to either of the other schools presents a problem. At Gladeview there is only one street affording access between Hialeah and Gladeview. This is N. W. 62nd Street. The only streets across the railroad-industrial area between Hialeah and Lorah Park are N. W. 46th and N. W. 54th Streets.

Pairing would result in approximately 475 pupils being transported, whether the pairing be between Hialeah and Lorah Park or Hialeah and Gladeview, and these pupils presently are walking to school. Pairing of Hialeah Elementary with either Gladeview or Lorah Park presents an additional problem in that Hialeah Elementary is more than 60 per cent Spanish-speaking.

The basis for organized instruction in the Hialeah Elementary School is the English proficiency of the Spanish-speaking pupils. This program permits emphasis on the acquisition of language patterns as developed through English as a Second Language program and permits instruction in Spanish. Because of the unique educational needs of non-English-speaking pupils, the educational program would be significantly impaired. (See Special Program Exhibit.)

EXHIBIT 14
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 15

LORAH PARK - HIALEAH - GLEEN CURTISS ELEMENTARY SCHOOLS

The basic problem in rezoning these schools is that the majority of the Lorah Park Elementary School pupils reside approximately two miles or more from the Hialeah or Glenn Curtiss Elementary Schools. The natural barrier, the corridor of the industrial complex that is about one-half mile wide along the Seaboard-Airline Railroad, pre-

sents a major problem in rezoning. Rezoning to accomplish any degree of desegregation would require the additional busing of approximately 525 pupils who presently are not transported.

The Hialeah Elementary School is geared to present an instructional program which meets the needs of Spanish-speaking pupils. The basis for organized instruction in the Hialeah Elementary School is English proficiency of the Spanish-speaking pupils. This grouping permits emphasis on the acquisition of language patterns as developed through English as a Second Language and permits instruction in Spanish, the native language of 60 per cent of the Hialeah Elementary School pupils. Because of the unique educational needs of non-English-speaking pupils, the educational program available at Hialeah Elementary School is most important.

The Spanish population at Glenn H. Curtiss Elementary School is projected to be approximately 44 per cent. As this percentage increases the emphasis upon the instructional program will change to meet the needs of these Spanish-speaking pupils.

Some rezoning has occured for the 1970-71 school year in this area. This was done for housing purposes and based upon the number of pupils in the area and the capacity of the available buildings. The only access between these three adjacent zones are grade crossings at N. W. 36th, N. W. 46th, and N. W. 54th Streets across the Seaboard-Airline Railroad.

It would appear that there is no way to rezone these three schools which would not place an unreasonable

economic burden upon the school system. Any possible rezoning of these three schools would increase the safety hazards to the children tremendously.

EXHIBIT 15
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 16

CITRUS GROVE, ADA MERRITT AND B. T. WASHINGTON JUNIOR HIGH SCHOOLS

The grouping of B. T. Washington Junior High with Ada Merritt and Citrus Grove Junior is not desirable educationally, administratively or economically. At B. T. Washington an experimental pilot and research program for disadvantaged youth, described in the attached material, was initiated in the 1969-70 school year. In addition, the facilities have been altered to serve this particular type of program. The five hundred pupils who have been enrolled in this program during the first year of its operation could not continue their participation in it if they were assigned to other schools. The project exists only at B. T. Washington. It is designed for a junior high structure of the seventh, eighth and ninth grades and grouping of these schools would necessitate placement of grades in some manner other than this sequence to achieve racial balance.

At Citrus Grove plans have been made and teacher-pupil schedules have been constructed to place this school on a ten-hour day. If a grouping were ordered it would mean a complete revamping of this school's plans and the

necessity for studying the possibility of modified school days at B. T. Washington and Ada Merritt. A major portion of each faculty would have to be reassigned both as to school and program.

The programs at Citrus Grove and Ada Merritt are designed primarily to serve a predominately Cuban pupil population with special personnel assigned for their particular needs. If these pupils are placed in these three schools, it would necessitate duplication of services and personnel.

The enrollment of approximately 4554 pupils in these schools and the capacities of the facilities do not lend themselves to grouping very readily. The splitting of grades among the three schools would, of necessity, have to take place and this would bring about severe community reaction. The administration problems would increase considerably.

The grouping of these schools within a common boundary would include a very large area extending from N. W. 24th Street south to approximately S. W. 8th Street and from Biscayne Bay west to S. W. 33rd Avenue. It is estimated that at least 1500 students would have to be cross-bussed due to the high concentration of pupils living within close proximity of each school. The majority of Black students living within an area bounded by N. W. 24th Street south to N. W. 5th Street and from the Florida East Coast Railroad to N. W. 7th Avenue is the prime example. The Miami River and Interstate 95 also present natural barriers of some consequence for students who would not be transported.

EHIHBIT 16
July 17, 1970
Response to Court Order
of July 10, 1970

BOOKER T. WASHINGTON JUNIOR HIGH SCHOOL

PREVOCATIONAL EXPERIENCE/ BASIC SKILLS PROJECT DESCRIPTION

This experimental pilot and research project for disadvantaged junior high school youth, to be known as the Booker T. Washington Junior High School Prevocational Experience/Basic Skills Project, is projected for a six-year period and will be funded through the Division of Vocational, Technical and Adult Education.

It is a comprehensive program which provides a curriculum combining general and vocational education. The focal point is at the ninth grade level providing for a three-hour block of time in the basic skills laboratory, a two-hour block of time in an advanced vocational course and a one-hour period of time for an elective. Preparatory vocational courses will be offered for two hours at the eighth grade level and for one hour at the seventh grade level.

The curriculum is designed so as to place emphasis on basic academic skills as well as in-school and on-the-job vocational training.

In the ninth grade skills laboratory, a team approach to instruction is utilized in the areas of mathematics,

science, the communications skills and vocational guidance. The structure of the project allows for maximum cooperation between the work experience, employability skills programs in working toward a common goal, that is, preparing the students with the essentials necessary for better employment.

The two-hour vocational block provides students with courses of study not previously offered at the junior high school level. These courses are:

Woodwork-Furniture Repair
Electronics Mechanics and Assembly
Power Machine Operation
Office Career Training
Health Career Training
Vestibule (employability) Training
Social Skills
Sheet Metal & Layout
Gas & Marine Engines
Related Science
Related Mathematics
Related Communication Skills

The instructional program will be functional and related to realistic vocational aspirations. Every possible incentive will be employed to stimulate the learning process. A wide variety of materials and instructional aids, specially designed for disadvantaged junior high school youth, will be created by the project staff.

The project provides for a specialized staff which concerns itself not only with, course content and skills, but also with the physical and emotional status of the students.

The staff consist of the following:

One coordinator
One materials specialists
One illustrator/materials specialists
One science skills teacher (related)
One communication skills teacher
One woodwork-furniture repair teacher
One sheet metal layout teacher
One gas & marine engines teacher
Two electronics mechanics and assembly teachers
Two power machine operation teachers
One health career training teacher
One office career training teacher
Two work experience advisors
One social skills teacher
One related math teacher
One project secretary

DESIRED OUTCOMES

1. To reduce the drop-out rate
2. To improve attendance
3. To provide pupils with a basic salable skill in the event that they become drop-outs
4. To prepare pupils for better employment
5. To improve competency in basic academic skills as well as employability skills
6. To provide a wide variety of specially designed and articulated vocational and general education courses to better meet the educational and vocational needs of disadvantaged youth

7. EXEMPLARY PROGRAM DADE COUNTY PUBLIC SCHOOLS

Vocational Research and Pilot Program at Booker T. Washington Junior High School For Establishment of Pilot Programs For A Comprehensive Junior High and/or Middle School

The Research and Pilot Program at Booker T. Washington Junior High which was designed to develop a comprehensive junior high and/or middle school, was selected in April 1970 by the Department of Education, Division of Vocational, Technical and Adult Education, as an exemplary program.

This project differs basically from the original state proposal as follows:

Comprehensive school versus special vocational educational center.

Our concept in Dade County is as follows:

Grades 1- 5—Effective Occupational Orientation

Grades 5- 9—Comprehensive middle and junior high schools to expose the student to a number of "career cluster" vocational programs for a basis of students making occupational alternatives, including selection and enrollment in a high school vocational program. An integral objective of vocational programs from grades 5-9 is to provide opportunities for students to attain "school

success", receive recognition and develop individual worth and educational goals.

Grades 10-12—Comprehensive High Schools

The following attachments will provide more detailed information to compare our exemplary program with the state exemplary proposal:

1. Introduction
2. General Objectives
3. General Instructional Techniques and Methods
4. Pilot Programs For Comprehensive Middle and Junior High Schools:
   a. Currently in operation
   b. To be designed and developed
5. Flow Chart

8. Name and position of administrators responsible for project:

Florida State Department
Dr. K. Eaddy, Coordinator, Vocational Research
Dade County Public Schools
Ernest Upthegrove, Asst. Director
High School Vocational and Technical Education

DIVISION OF VOCATIONAL, TECHNICAL AND ADULT EDUCATION

1410 Northeast Second Avenue
Miami, Florida 33132

INTRODUCTION

Nationwide attention is being focused on vocational education in an effort to provide more meaningful programs for students who are not college-bound. Florida legislators are in the process of passing legislation to encourage and support expansion of vocational education.

If we are to take seriously the charge voiced by the President's Commission on Law Enforcement and Administration of Justice that there be vocational programs to equip *every* non-college bound student with a marketable skill, the magnitude of the job ahead becomes clear.

A recent report by the National Advisory Council on Vocational Education recommends an early beginning:

> Vocational training should begin at elementary levels with stress on "respect for work and pride of workmanship"; direct job-related instruction should start in upper elementary grades; vocational schools should not be separated from regular high schools.

The comprehensive middle school offers both general and vocational education in an effort to meet the needs of all students. The student with college plans would be encouraged to pursue the general education program. Students with little possibility of successfully completing

college would be encouraged to select a "vocational core program" from grades six through eight. This number of vocational courses will provide broad exploratory opportunities which will enable each student to select occupational alternatives for possible high school vocational specialization. Also these programs are designed for preparatory occupational training.

Flexibility of scheduling will be such that students could be interchanged from one program to the other, if necessary, as their interests, achievement and/or educational plans change.

The Comprehensive Middle School will provide an opportunity for students who have not profited from the regular school program to attain "school success" through an action type program not centered in academics. However, basic skills will be improved because they will be taught in relation to vocational content and interest to students.

Although such a program is designed to provide basic skills it also serves to create their interest in continuing education. Too often young people leave school having experienced failure and frustration in purely academic courses unsuited to their aptitudes. It is important that young men and young women approach adult life with a sense of self-respect, confidence and purpose. The satisfaction thus experienced will encourage punctuality, improved school attendance, honesty, industry and cooperation so necessary for success in the world of work. Association with instructors who are skilled in their arts will establish a realization of the respect and dignity afforded to craftsmen and business people in everyday life.

These facilities will provide multi-utilization scheduling options to serve both vocational and general education classes in areas such as industrial arts and business education. In addition these laboratories may be used to serve adult classes.

In summary, vocational experiences in junior high school should enable a larger percentage of students to successfully make the transition from school, to work, to citizenship with an understanding of the need for continued education. This success should help increase the number of contributing citizens. It should help to reduce welfare rolls, juvenile delinquency, crime and allied problems such as social unrest. Most important, the comprehensive middle school should help decrease the need for a large number of expensive remedial programs for out-of-school unemployed youth.

EXHIBIT 17

ALLAPATTAH AND R. E. LEE JUNIOR HIGH SCHOOLS AND MIAMI EDISON MIDDLE SCHOOL

The attached chart showing the racial composition of the three schools indicates that R. E. Lee Junior and Miami Edison Middle School have already attained a marked degree of integration.

Of the R. E. Lee pupil population, 58 per cent is Spanish-speaking. Special programs for these pupils have become an integral part of the school's curriculum.

No apparent rezoning or regrouping with any conventional junior high schools would be compatible with the educational program being implemented at Miami Edison Middle School. Grade levels are different at Miami Edison Middle from the surrounding junior high schools. Miami Edison Middle has a sixth grade but it does not have a ninth grade; it is a middle school housing grades 6, 7, and 8. It has a program uniquely conceived and is implemented as a true middle school. It has approximately 60 per cent Black students. The elementary feeder schools to Miami Edison Middle School are Shadowlawn, Morningside, Little River and Edison Park. These feeder schools have educational programs that are planned sequentially to fit the Miami Edison Middle School program.

The 60 per cent Black ratio at Miami Edison Middle is tending to stabilize at this percentage. It would be questionable whether this stability could be maintained if boundary lines were changed or if any grouping with another school is attempted at this time.

The grouping or rezoning of Allapattah Junior High School, Miami Edison Middle School, and Robert E. Lee Junior High School would not be administratively, economically, or educationally feasible.

EXHIBIT 17
July 17, 1970
Response to Court Order
of July 10, 1970

Attachment to
EXHIBIT 17

1970-71 BOARD PLAN

School	Grade	W	B	T	%B	Capacity
Allapattah Junior	6-9	0	1450	1450	100	1499
R. E. Lee Junior	7-9	780	420	1200	35	1186*
Miami Edison Middle	6-8	499	746	1245	60	1323*

*Including portables

EXHIBIT 18

BROWNSVILLE JUNIOR HIGH — REZONED OR GROUPED MIAMI SPRINGS JUNIOR HIGH

The pairing or rezoning of Brownsville Junior High School and Miami Springs Junior High School would not be economically, or educationally feasible.

The Miami Springs Junior High School is planned as a 7 and 8 grade school for 1970-71. Brownsville Junior High School is planned as a 7, 8, and 9 grade school for 1970-71. The ninth grade from Miami Springs Junior has been assigned to Miami Springs Senior High School.

Brownsville and Miami Springs Junior High Schools are more than two miles apart. Any pairing or rezoning of these schools would require the additional busing of approximately 600 pupils.

Brownsville Junior has many pupils enrolled in a Work-Experience Program. This type of on-the-job train-

ing for a portion of the pupil's day is vital to the youth in the Brownsville Community. If the pupils were assigned to Miami Springs Junior, few jobs would be available since Miami Springs Junior High School is located in a residential area.

Existing plans for the 1970-71 school year eliminated the optional areas between Miami Springs and Brownsville assigning all of these optional areas to Miami Springs. The majority/minority option would provide any Brownsville students with the opportunity to attend Miami Springs if they choose to do so in 1970-71 without any action being taken on boundary lines.

EXHIBIT 18
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 19

ALTERNATIVES OF REZONING OR GROUPING

Examining the alternatives relative to the desirability of rezoning or grouping of the Junior High Schools in Exhibits 16, 17, and 18, many factors were considered.

Whenever optional attendance zones have existed in the past, attempts were made to positively zone these to increase the amount of desegregation. This included an optional area between B. T. Washington and Ada Merritt that was zoned into B. T. Washington. The optional area between R. E. Lee and Citrus Grove Junior was zoned into B. T. Washington; and the optional area between Browns-

ville, Lee and Miami Springs which was predominately Black was zoned into Miami Springs.

The attendance zones as proposed in the Board plan tends to make maximum use of the facilities while minimizing the economic burden of additional transportation and program duplication. Any alteration of the attendance areas would have a potential domino effect, that is, a change in one attendance zone may require additional changes that would effect several other schools.

One of the primary areas of consideration is the "Model Cities Area" which consists of approximately seven square miles containing over a 100,000 Black population. There are eighteen schools in this area housing approximately 21,000 pupils. In addition, many pupils living in this area are attending schools on the periphery. Where housing is critical pupils are being transported to other schools in the county. These groups include approximately 4,000 pupils.

Only the elementary schools bordering on the west of the "Model Cities Area" will fail to have a marked degree of integration for the 1970-71 school year. These are schools that are separated from the "Model Cities Area" by the industrial complex on the west. All other schools on the periphery will be integrated. Those Black pupils remaining in the predominately Black schools may exercise their option under the majority/minority transfer policy to attend an integrated school.

Education programs that meet the needs of the local school community were another of the considerations given to any pairing or rezoning plan. Since many of these

special programs, as described in the other exhibits for the Court, are tailored for the individual school population, it would be difficult to duplicate without substantial expenditures or curtailment of many aspects of the programs.

EXHIBIT 19
July 17, 1970
Response to Court Order
of July 10, 1970

EXHIBIT 20

SAFETY FACTORS

Attached is a report from the Department of Traffic and Transportation, Metropolitan Dade County, regarding Safety Factors of the areas around schools as requested by the Court.

Also included are several reports from the districts involving Safety Factors of particular schools or groupings.

Attached to Court copy are letters, telegrams, pictures and map. Any party interested in these attachments should check the Court file as it was impractical to attach these to every report.

EXHIBIT 20
July 17, 1970
Response to Court Order
of July 20, 1970

SAFETY FACTORS IN THE GROUPING OF BEL-AIRE, MOTON, AND PERRINE ELEMENTARY SCHOOLS

There will be 101 pupils crossing U.S. #1 from the Perrine area to R. R. Moton. 190 pupils crossing from the Bel-Aire area to Moton at the same time there will be 253 pupils crossing from Moton to Bel-Aire and 121 pupils from Moton to Perrine. It should be noted that all these pupils will have to cross U.S. #1, a set of railroad tracks, and also walk along streets that do not have sidewalks. (Item 20)

SAFETY FACTORS PAIRING OF DOUGLAS AND RIVERSIDE ELEMENTARY SCHOOLS

All pupils, approximately 1600, walking to Douglas from the Riverside area or to Riverside from the Douglas area will encounter the traffic hazards listed below:

Fifth Street bridge across the Miami River (approach and exit on Fifth Street)

N. W. 7th Avenue — six lanes of traffic

All pupils going to Riverside from Douglas will also have to cross:

N. W. or S. W. 8th Avenue

Flagler Street — 4 lanes of traffic

S. W. 1st Street — 3 lanes of traffic

Some pupils going from Riverside to Douglas will have to cross:

S. W. 1st Street — 3 lanes of traffic

Flagler Street — 4 lanes of traffic

S. W. or N.W. 8th Avenue

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Item (20) Page 5

SAFETY FACTORS
PAIRING OF DADE AND TUCKER ELEMENTARY SCHOOLS

All pupils walking from Dade to Tucker or from Tucker to Dade will encounter the traffic hazards noted below:

Bird Road — 4 lanes of east-west traffic

Railroad — 2 sets of tracks

U. S. #1 or South Dixie Highway — 9 lanes of north-south traffic plus one "right on red" turn permitted

Grand Avenue — 4 lanes of east-west traffic

Some pupils going from Dade to Tucker will have to cross Douglas Road (S. W. 37 Avenue).

No sidewalks available for all pupils traveling on Douglas Road between U. S. #1 and Grand Avenue — 8 short blocks combined business/residential area.

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Item (20) Page 5

METROPOLITAN DADE COUNTY, FLORIDA
DEPARTMENT OF TRAFFIC AND
TRANSPORTATION
July 20, 1970

Dr. E. L. Whigham, Superintendent
Board of Public Instruction
1410 NE Second Avenue
Miami, Florida 33132

Dear Dr. Whigham:

This is in response to a request presented to us by Mr. R. B. Little, Welfare and Attendance, Monday, July 13, 1970, to examine and comment on school crossing considerations in 13 areas of the County.

Mr. Little gave us a list, and later by phone provided some estimates of the number of students involved. We have examined the existing traffic control devices and made a determination as to their adequacy to accommodate the new student travel patterns.

Our comments and recommendations are:

1. *Lewis and Cooper*

   Boundary eliminated: SW 4 Street (E-W) and US #1 (N-S)

   Recommendations: Install intersection signal at SW 2 Avenue and SW 4 Street with controlled marked crosswalk on west side of intersection. Add pedestrian features to existing traffic signals at US #1 and NE 11 Street, US #1 and NE 8 Street, and US #1 and SE 8 Street to provide safe pedestrian crossings.

Comments: Traffic volume, SW 4 Street, 2350 per day

Traffic volume, US #1, 9,000 per day

Estimated walking students, 622.

2. *Florida City and West Homestead*

Boundary eliminated: NW 7 Avenue (N-S) and Davis Parkway (E-W)

Recommendations: Install intersection signal at Arthur Vining Davis Parkway and Redland Road with controlled marked crosswalk on east side of intersection.

Comments: Traffic volume, Davis Parkway, 3200 per day
Estimated walking students, 450 per day

3. *Lewis, Cooper, W. Homestead, and Florida City*

Rezoning matter. Note items 1 and 2 above.

4. *Allapattah and Santa Clara*

Boundary eliminated: Airport Expressway

Recommendations: Add concurrent pedestrian signal indications to existing traffic signals at NW 36 Street and NW 10 Avenue, and at NW 36 Street and NW 12 Avenue with controlled marked crosswalks on west side of intersections. Restrict turning movements on west crosswalks during school hours.

Comments: Traffic volume, NW 36 Street, 14,430 per day.
Estimated walking students, 200 per day.

5. *Dunbar and Buena Vista*

Boundary eliminated: NW 27 Street

Recommendations: Add concurrent pedestrian signal indication to existing signalization at NW 2 Avenue and 29 Street, and at NW 5 Avenue and 29 Street with controlled marked crosswalks on east side of intersections. Restrict vehicle turning movements over these crosswalks during school hours.

Comments: Traffic volume, NW 29 Street, 11,193 per day.

Estimated walking students, 350 per day.

6. *Wheatley and Miramar*

Boundary eliminated: NW 1 Avenue/NW 1 Court

Recommendations: Existing signalization is adequate.

Comments: Traffic volume, N. Miami Avenue, 12,800 per day.
Estimated walking students, 300 per day.

7. *Arcola Lake and Blanton*

Boundary eliminated: Little River Canal

Recommendations: Due to the nature of this boundary, with no intermediate crossing points, all students would have to cross the canal at NW 7 Avenue near Little River Drive or in the vicinity of NW 15 Avenue and 95 Street unless an additional crossing is erected. Lack of adequate sidewalks at existing crossings and walking distances involved require that an additional foot bridge be erected

across the canal in the vicinity of NW 12 Avenue. Estimated cost of bridge is $13,000. Estimated construction period, 60 days after award of contract.

Comments: After construction of the foot bridge an intersection signal with pedestrial signal indications will have to be installed at NW 12 Avenue and NW 95 Street.
Traffic volume, NW 95 Street, 13,300 per day.
Estimated walking students, 300 per day.

8. *Holmes Complex, Little River, and Edison Park*

Boundary eliminated: FEC track, NW 7 Avenue, NW 71 Street

Recommendations: Existing signalization in the area must be improved as follows:

1. Add exclusive pedestrian feature at NW 7 Avenue and NW 71 Street on all four cross walks.
2. Add exclusive pedestrian feature at signal at NW 2 Avenue and NW 71 Street on all four cross walks.
3. Add concurrent pedestrian feature to the existing signal at NW 7 Avenue and NW 62 Street with the controlled marked cross walk on the north side.

Comments: Traffic volume, NW 7 Avenue, 19,260 per day.
Traffic volume, NW 71 Street, 8,900 per day.
Estimated walking students, 700 per day.

9. *Lorah Park and Hialeah*

Boundary eliminated: SAL RR tracks

Recommendations: Add concurrent pedestrian traffic signal indications on north side of intersection of NW 37 Avenue and 54 Street, with turn restrictions for east-west traffic. Add concurrent pedestrian signal indications on west side of intersection of NW 32 Avenue and NW 54 Street, with turn restrictions for north-south traffic. Add concurrent pedestrian signal indications on south side of intersection at NW 37 Avenue and NW 62 Street, with turn restrictions for east-west traffic.

Comments: Traffic volume, NW 37 Avenue, 9,500 per day.
Estimated walking students, 250 per day.

9B. *Gladeview and Hialeah*

Boundary eliminated: SAL RR tracks

Recommendations: Add exclusive pedestrian signal indications on north side of intersection and restrict turning movements for east-west traffic at NW 32 Avenue and 62 Street. Add exclusive pedestrian crossing on north and south sides of the intersection of NW 37 Avenue and 71 Street, with turn restrictions for east-west traffic.

Comments: Traffic volume, NW 37 Avenue, 9,500 per day.

Estimated walking students, 250 per day .

10. *Lorah Park, Hialeah, and Curtis*

Rezoning matter. See Item 9 above.

11. *Washington, Merritt, and Citrus Grove*

Boundary eliminated: Miami River, NW/SW 14 Avenue

Recommendations: Add intersection signalization at NW 14 Avenue and 14 Street with exclusive pedestrian signal indications on north side of intersection. Turn restrictions for east-west traffic during school hours. Add exclusive pedestrian signal indications on north side of intersection at NW 12 Avenue and 14 Street, with turn restrictions for east-west traffic during school hours. Add exclusive pedestrian signal indications on north side of intersection of NW 10 Avenue and 14 Street, with turn restrictions for east-west traffic during school hours. Add exclusive pedestrian signal indications on west and south sides of intersection of NW 7 Avenue and 14 Street, with turn restrictions for all traffic during school hours. Install intersection signal at NW 17 Avenue and 3 Street, with exclusive pedestrian signal indications on north side of intersection with turn restrictions for east-west traffic during school hours.

Comments: Traffic volume, NW 12 Avenue, 28,100 per day. Estimated walking students, 300 per day (on NW 14 Street only).

12. *Allapattah, Miami Edison, and Lee*

Boundary eliminated: Airport Expressway and I-95

Recommendation: Install intersection signal at NW 7 Avenue and 53 Street, with concurrent pedestrian signal indications on north cross walk; turn restric-

tions for east-west traffic during school hours. Add exclusive pedestrian signal indications on south cross walk at intersection of NW 6 Court and 54 Street. Add concurrent pedestrian signal indications on south cross walk at intersection of NW 6 Avenue and 54 Street. Add concurrent pedestrian signal indications on west cross walk at NW 2 Avenue and 54 Street, with turn restrictions for north-south traffic during school hours.

Comments: Traffic volume NW 7 Avenue, 22,800 per day.
Traffic volume, NW 54 Street, 22,700 per day.
Traffic volume, NW 36 Street, 14,000 per day.
Estimated walking students, 1,000 per day.

13. *Brownsville and Miami Springs*

Boundary eliminated: NW 32 Avenue

Recommendations: Add exclusive pedestrian signal indications on north side of intersection at NW 32 Avenue and 46 Street.

Comments: Traffic volume, NW 32 Avenue, 11,900 per day.

Estimated walking students, 200 per day.

We are aware that the zoning is not yet fixed and that changes may well occur, and that your people are very busily engaged in this work. We are sure that you will understand, therefore, that the foregoing is a somewhat limited review in that the time allowed was too short for the detail we normally direct to these important matters. We must remind you that we need to know as soon as possible just what the boundaries are to be as the

acquisition, delivery, and installation of equipment must be considered before school children are rerouted.

The work itemized above requires an estimated $56,190 worth of traffic signal equipment. To accomplish this work, we will have to request and be provided this additional funding. Following this, the equipment must be ordered; and our current experience indicates that the delivery time would be about four months. We estimate that upon receipt of the equipment an additional three months will be required for our forces to complete the work. This would be about March 1, 1971.

It should be noted that in addition to the construction time of 60 days required to build a foot bridge over the Little River Canal, it will take approximately 60 days to design, advertise, and award a contract for this bridge, assuming no unusual problems arise, such as right-of-way acquisition, etc. This means that it would take a minimum of four months to build this bridge.

Additionally, we have been requested to comment on the following areas:

A. *Rainbow Park*

Boundary eliminated: NW 27 Avenue

Recommendations: Add exclusive pedestrian signal indications on the north and west side of the intersection at NW 27 Avenue and 151 Street.

Comments: Traffic volume, NW 27 Avenue, 29,400 per day.
Estimated walking students, 387 per day.

B. *Opa-locka*

Boundary eliminated: NW 27 Avenue

Recommendations: Add exclusive pedestrian signal indications on north side of intersection of NW 27 Avenue and Ali Baba Avenue. Add exclusive pedestrian signal indications on north side of intersection at NW 22 Avenue and Ali Baba Avenue.

Comments: Traffic volume, NW 27 Avenue, 32,258 per day.

Traffic volume, NW 22 Avenue, 15,700 per day.

Estimated walking students, 385 per day.

C. *Moton, Perrine, and Bel-Aire*

Boundary eliminated: US #1

Recommendations: Add exclusive pedestrian signal indications on the north and south sides of the intersection at SW US #1 and 186 Street.

Add exclusive pedestrian signal indications on south side of intersection at US #1 and Hibiscus (SB).

Add concurrent pedestrian signal indications on the south side of the intersection at US #1 and Hibiscus (NB).

Add exclusive pedestrian signal indications on the south side of the intersection at SW US #1 and 184 Street.

Add exclusive pedestrian signal indications on the south side of the intersection of SW US #1 (south) and 174 Street.

Add concurrent pedestrian signal indications on the south side of the intersection of SW US #1 (north) and 174 Street.

Comments: Traffic volume, US #1 (N), 20,000 per day.

US #1 (S), 20,000 per day.

Estimated walking students, 665.

Installation could be accomplished by March 1, 1971 in line with the reasoning as developed above for the first 13 items reviewed.

Estimated cost for additional equipment for these installations is $10,200.00. This added to the $56,190 mentioned above gives a total of $66,390 required for equipment. It is stressed that this does not include any of the labor costs involved in the installation of this equipment.

Sincerely,

/s/ Gene Simm

Eugene L. Simm
Director

ELS:el
cc: Mr. R. B. Little

[TITLE OMITTED]

AMENDMENT TO REPLY TO ORDER REQUESTING SUPPLEMENTAL REPORT SUBMITTED JULY 20, 1970

Attached hereto is our Exhibit 2. Exhibit 2 attached to the Reply to Order Requesting Supplemental Report is

to be disregarded and this is to be substituted therefor.

Respectfully submitted,

BOLLES, GOODWIN, RYSKAMP & WARE
Attorneys for Defendant
1410 N. E. Second Avenue
Miami, Florida 33132

By_____
GEORGE C. BOLLES, *Of Counsel*

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Amendment to Reply to Order Requesting Supplemental Report was mailed to all counsel of record, this 22nd day of July, 1970.

_____
GEORGE C. BOLLES

REVISED EXHIBIT 2

PROPOSED PUPIL ATTENDANCE

The attached table reflects the proposed pupil membership and racial composition according to the School Board plan as modified by the Court in selected schools. The compilation includes the breakdown by grade level and race as projected for the 1970-71 school year. The schools included are those in the HEW report and those schools as requested by the Court.

REVISED EXHIBIT 2
July 22, 1970
Response to Court Order
of July 10, 1970

PROPOSED PUPIL MEMBERSHIP AND RACIAL COMPOSITION

1970-71

ELEMENTARY

SCHOOL	GRADE 1 EST. MEMB.	GRADE 1 RACIAL COMP. BLACK	GRADE 2 EST. MEMB.	GRADE 2 RACIAL COMP. BLACK	GRADE 3 EST. MEMB.	GRADE 3 RACIAL COMP. BLACK	GRADE 4 EST. MEMB.	GRADE 4 RACIAL COMP. BLACK	GRADE 5 EST. MEMB.	GRADE 5 RACIAL COMP. BLACK	GRADE 6 EST. MEMB.	GRADE 6 RACIAL COMP. BLACK	TOTAL ELEMENTARY EST. MEMB.	TOTAL ELEMENTARY RACIAL COMPOSITION WHITE	TOTAL ELEMENTARY RACIAL COMPOSITION BLACK
Allapattah	234	98%	234	100%	219	100%	250	100%	233	99%			1,170	1%	99%
Arcola Lake	137	90%	137	80%	140	87%	147	88%	150	96%	129	93%	840	12%	88%
Avocado	103	0%	107	0%	99	0%	95	0%	107	0%	99	0%	610	100%	0%
Be Aire	114	55%	140	42%	147	40%	149	49%					550	54%	46%
Bethune	254	52%	275	54%	311	53%							840	47%	53%
Blanton	145	12%	135	14%	126	15%	130	16%	127	13%	112	13%	775	87%	13%
Broadmoor	347	50%	361	45%	282	45%							990	54%	46%
Buena Vista	176	8%	176	6%	121	9%	99	5%	83	9%	95	7%	750	93%	7%
Bunche Park	150	100%	120	100%	150	100%	130	100%	150	100%	120	100%	840	0%	100%
Carver, G. W.	127	100%	127	100%	76	100%	86	100%	*82	100%	*95	100%	*593	0%	100%
Colonial Drive	120	33%	123	25%	115	28%	127	31%	120	28%	115	17%	720	73%	27%
Comstock	259	1%	257	1%	251	1%	258	1%	212	1%	213	1%	1,450	99%	1%
Cooper, N. K.	109	18%	142	17%	118	16%	110	16%	103	15%	93	14%	675	84%	16%
Coral Gables	105	0%	105	0%	114	0%	125	0%	120	0%	136	0%	705	100%	0%
Curtiss, Glenn	75	0%	76	0%	90	1%	108	1%	115	1%	106	1%	570	100%	0%
Dade	127	1%	127	1%	109	1%	107	1%	95	1%	100	0%	665	99%	1%
Douglas	284	99%	267	98%	252	98%	197	98%	202	98%	198	98%	1,400	2%	98%
Drew, C. R.	140	100%	160	100%	150	100%	170	100%	155	100%	120	100%	895	0%	100%
Dunbar	195	94%	195	99%	169	92%	150	92%	164	93%	142	93%	1,015	7%	93%
Ea ington Hts.	171	98%	165	98%	148	98%	145	98%	146	98%	145	98%	920	2%	98%
Edison Park	172	55%	171	52%	179	52%	192	50%	171	53%			885	47%	53%
Evans, L. C.	180	100%	125	100%	170	100%	145	100%	180	100%	155	100%	955	0%	100%
Floral Hts.	144	100%	146	100%	150	100%	148	100%	135	100%	112	100%	835	0%	100%
Florida City	74	12%	77	12%	86	11%	74	10%	72	11%	67	10%	450	89%	11%
Gladeview	99	98%	98	98%	106	100%	96	100%	109	100%	127	96%	635	2%	98%
Hialeah	144	0%	143	0%	151	0%	161	0%	145	0%	151	0%	895	100%	0%
Holmes Complex	251	100%	235	100%	253	100%	292	100%	292	100%	252	100%	1,575	0%	100%
Lewis, A. L.	103	96%	110	95%	105	95%	99	96%	93	99%	90	100%	600	3%	97%
Liberty City	190	100%	150	100%	140	100%	150	100%	140	100%	150	100%	920	0%	100%
Little River	164	35%	164	37%	173	33%	200	38%	225	35%	174	35%	1,100	65%	35%

*Excludes fifth and sixth grade pupils transferred to F. S. Tucker Elementary.

PROPOSED PUPIL MEMBERSHIP AND RACIAL COMPOSITION--CONT'D.

1970-71

ELEMENTARY

SCHOOL	GRADE 1		GRADE 2		GRADE 3		GRADE 4		GRADE 5		GRADE 6		TOTAL ELEMENTARY		
	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMP. BLACK	EST. MEMB.	RACIAL COMPOSITION WHITE	RACIAL COMPOSITION BLACK
Lorah Park	108	100%	108	100%	125	100%	140	100%	117	100%	142	100%	740	0%	100%
Ma in, F. C.	210	100%	215	100%	205	100%	170	100%	225	100%			1,025	0%	100%
Ma ose							290	43%	300	46%	250	47%	840	55%	45%
Miami Park	190	22%	170	21%	185	16%	180	16%	195	12%	160	16%	1,080	80%	20%
Miramar	103	24%	102	14%	96	28%	83	12%	57	24%	59	22%	500	80%	20%
Moton, R. R.									252	40%	248	43%	500	53%	47%
North County	178	90%	178	90%	159	86%	159	87%	144	91%	162	85%	980	12%	88%
Olinda	115	100%	140	100%	140	100%	145	100%	140	100%	145	100%	825	0%	100%
Opa-locka	120	40%	189	38%	146	38%	200	42%	185	37%	185	33%	1,025	62%	38%
Orchard Villa	215	100%	218	100%	200	100%	205	100%	207	100%	135	100%	1,230	0%	100%
Parkview	90	2%	92	2%	90	2%	88	2%	93	2%	62	2%	515	98%	2%
Perrine	79	38%	83	39%	84	35%	94	35%					340	64%	36%
Pharr, Kelsey	113	100%	125	100%	142	100%	160	100%	174	100%	136	100%	850	0%	100%
Pine Villa	110	91%	130	93%	140	93%	150	94%	145	90%	150	93%	825	8%	92%
Poinciana Park	170	100%	190	100%	205	100%	245	100%	190	100%	220	100%	1,220	0%	100%
Rainbow Park	115	41%	120	43%	100	42%	110	42%	98	39%	107	40%	650	59%	41%
Redondo	81	0%	73	0%	81	0%	55	0%	61	0%	49	0%	400	100%	0%
Ri erside	363	1%	361	1%	354	1%	294	1%	247	1%	321	1%	1,940	99%	1%
Sa a Clara	127	26%	142	14%	142	28%	99	30%	91	33%	94	29%	695	75%	25%
Scott Lake	125	1%	140	2%	135	1%	140	1%	145	1%	165	1%	850	99%	1%
Sunset	150	8%	136	6%	138	9%	165	7%	168	8%	168	8%	925	92%	8%
Tucker, F. S.	146	100%	147	100%	142	100%	155	100%	*63	100%	*59	100%	*712	0%	100%
West Dunbar	61	32%	61	32%	69	29%	180	11%	201	10%	188	11%	760	85%	15%
West Homestead	139	87%	138	86%	131	86%	130	86%	114	84%	138	85%	790	14%	86%
West Little River							323	54%	296	50%	321	51%	940	49%	51%
Westview	90	0%	110	0%	130	0%	120	0%	125	0%	110	0%	685	100%	0%
Wheatley, Phyllis	172	99%	107	100%	135	99%	147	100%	123	100%	321	100%	1,005	0%	100%
Young, Nathan	95	85%	96	85%	96	85%	65	85%	95	85%	63	85%	510	15%	85%

*Includes fifth and sixth grade pupils from G. W. Carver Elementary.

PROPOSED PUPIL MEMBERSHIP AND RACIAL COMPOSITION--CONT'D.

1970-71

JUNIOR HIGH

SCHOOL	GRADE 5 EST. MEMB.	GRADE 5 RACIAL COMP. BLACK	GRADE 6 EST. MEMB.	GRADE 6 RACIAL COMP. BLACK	GRADE 7 EST. MEMB.	GRADE 7 RACIAL COMP. BLACK	GRADE 8 EST. MEMB.	GRADE 8 RACIAL COMP. BLACK	GRADE 9 EST. MEMB.	GRADE 9 RACIAL COMP. BLACK	TOTAL JUNIOR HIGH EST. MEMB.	TOTAL JUNIOR HIGH RACIAL COMPOSITION WHITE	TOTAL JUNIOR HIGH RACIAL COMPOSITION BLACK
.llap ah Jr.			275	100%	400	100%	380	100%	425	100%	1,480	0%	100%
rownsville Jr.					560	100%	435	100%	445	100%	1,440	0%	100%
arol City Jr.					670	24%	580	26%	525	21%	1,775	77%	23%
arver Jr.					875	24%					875	76%	24%
itrus Grove Jr.					560	0%	555	0%	564	0%	1,679	100%	0%
utler Ridge Jr.					729	18%	659	20%	587	21%	1,975	80%	20%
rew, C. R. Jr.					652	100%	613	100%	285	100%	1,550	0%	100%
iler, H. H. Jr.					650	9%	635	9%	645	8%	1,930	91%	9%
isher, Ida M. Jr.					272	27%	264	28%	254	23%	790	74%	26%
oe, R. E. Jr.					470	38%	400	36%	330	33%	1,200	65%	35%
dison Jr.					602	60%	572	59%	232	11%	1,406	50%	50%
inn, H. Jr.					577	26%	501	26%	192	11%	1,270	76%	24%
ys Jr.					645	42%	588	43%	517	41%	1,750	58%	42%
rritt, Ada Jr.					320	0%	345	0%	340	0%	1,005	100%	0%
iami Edison Middle			330	58%	475	60%	440	62%			1,245	40%	60%
iami Springs Jr.					800	16%	765	227			1,565	82%	18%
nuf s Jr.					598	7%	492	11%	485	11%	1,475	90%	10%
orth Dade Jr.					548	67%	524	68%	498	68%	1,570	32%	68%
almetto Jr.					693	2%	669	1%	643	1%	2,005	99%	1%
alm Springs Jr.					500	0%	590	0%	760	0%	1,850	100%	0%
arkway Jr.					545	21%	570	20%	530	20%	1,645	80%	20%
once de Leon Jr.							856	28%	898	24%	1,754	74%	26%
ichmond Hts. Jr.			209	100%	565	56%	535	54%	561	57%	1,870	39%	61%
henandoah Jr.					612	1%	594	1%	572	1%	1,778	99%	1%
ashington, B. T. Jr.					730	90%	600	89%	540	85%	1,870	12%	88%

PROPOSED PUPIL MEMBERSHIP AND RACIAL COMPOSITION--CONT'D.

1970-71

SENIOR HIGH

SCHOOL	GRADE 9 EST. MEMB.	GRADE 9 RACIAL COMP. BLACK	GRADE 10 EST. MEMB.	GRADE 10 RACIAL COMP. BLACK	GRADE 11 EST. MEMB.	GRADE 11 RACIAL COMP. BLACK	GRADE 12 EST. MEMB.	GRADE 12 RACIAL COMP. BLACK	TOTAL SENIOR HIGH EST. MEMB.	TOTAL SENIOR HIGH RACIAL COMPOSITION WHITE	TOTAL SENIOR HIGH RACIAL COMPOSITION BLACK
Hi[illegible]ah Sr.	190	0%	1748	0%	1468	0%	1169	0%	4,575	99%	1%
Miami Central Sr.	552	44%	1090	24%	881	30%	677	28%	3,200	70%	30%
Miami Edison Sr.	453	25%	783	23%	629	27%	482	34%	2,347	73%	27%
Miami Jackson Sr.			1020	75%	867	93%	693	91%	2,580	15%	85%
Miami Northwestern Sr.	232	100%	1050	100%	813	100%	595	100%	2,690	0%	100%
Miami Sr. High			1581	11%	1547	2%	1397	1%	4,525	95%	5%
Miami Springs Sr.	705	16%	1088	12%	975	5%	802	3%	3,570	91%	9%

EXHIBIT 2
July 17, 1970
Response to Court Order
of July 10, 1970

[TITLE OMITTED]

ORDER ON MOTION OF DADE COUNTY SCHOOL BOARD FOR REHEARING AND RECONSIDERATION

THIS CAUSE is before me on the Dade County School Board's Motion for Clarification and Reconsideration following entry of my supplemental order on July 24, 1970.

1. In my order of July 24, the Board was asked to consider whether Dunbar, Wheatley, Buena Vista, Miramar, Santa Clara, West Dunbar and Douglas Elementary Schools could be utilized in effecting desegregation. In responding to the order, the Board maintains that any grouping, pairing or zoning of all seven of the above-named schools would be impractical or impossible. This court is now asked to eliminate Douglas Elementary School from the grouping, thus making it possible to submit a desegregation plan for the remaining six schools. The Classroom Teachers Association has appeared to voice its approval of this modification of my June 24 order. Upon consideration of this modification and the testimony presented, the Court finds as follows:

A. The Board has now demonstrated the substantial impediments to include Douglas Elementary School in the plan involving the other six above named schools. On the basis of testimony adduced, I find that (i) Douglas Elementary is on the southern end of the Black community; (ii) the White schools which could be used in a pairing or grouping are north of the Black community; (iii) to include Douglas in the desegregation plan would require transportation of 575 to 600 additional pupils; (iv) be-

cause of the high density of students surrounding Douglas, a substantial number of pupils would be required to walk up to two miles along heavily traveled Northwest 7th Avenue, and around and under I-95 and 836, both limited access highways whose interchange lies directly north of the Douglas School; (v) this modified plan presented by the Board will eliminate two predominantly all-Black Schools, viz., Wheatley and Dunbar (previously 100% and 93% Black, respectively, and now each approximately 50% Black); (vi) under the Board's modified plan the Spanish-speaking pupils can be transported for orientation classes because of the economy of scale involved; (vii) in the pairing of a predominantly Black school and a school containing predominantly Spanish speaking students, substantial educational and administrative problems are encountered because of the totally different programs requiring specially trained faculty at each school; (viii) in such pairing, the integration of pupils in the same classroom is rendered impracticable as a result of language barriers and program conflicts; (ix) the anticipated enrollment next month of Spanish speaking students is 55,225 or 22.1% of the total Dade County enrollment, many of whom will require assignment to the Bi-Lingual Education Program; (x) any pairing of schools involving these completely different programs would require a substantial duplication in both schools at greatly increased cost and an obvious lessening of efficiency.

On the basis of the foregoing considerations, the Court feels that the School Board's Motion for Modification should be granted.

2. The Court inadvertently referred to the "pairing" of Rainbow Park and Opa Locka Elementary School on

page 20 of the order entered July 24, 1970. This was an error as it was intended that such schools be rezoned in accordance with the order entered June 26, 1970. Accordingly, the word "pairing" is stricken and the word "rezoning" is hereby substituted.

3. This Court reasserts the portion of its Order of August 29, 1969 which enjoins all persons from attacking or interfering in any way with the operation of the plan except by appellate review. Under the mandate of the Fifth Circuit, the orders entered June 26 and July 24 were, and this order will be forthwith transmitted by the Clerk of this Court to the Clerk of the Fifth Circuit for its consideration of the appeal heretofore perfected.

ENTERED at Miami, Florida this 31st day of July, 1970.

/s/ C. Clyde Atkins

United States District Judge

cc. All counsel of record

[TITLE OMITTED]

ORDER

The Court has been made aware of an apparent inconsistency in the language used by the Fifth Circuit Court of Appeals and this Court regarding the creation of a biracial committee.

In its opinion dated August 12, 1970 the Fifth Circuit states that:

> "the board is commended to establish a bi-racial committee similar in function to that established in Ellis, supra, and as described in the district court's opinion in this case. (See Appendix "A", pp. 50-51)."

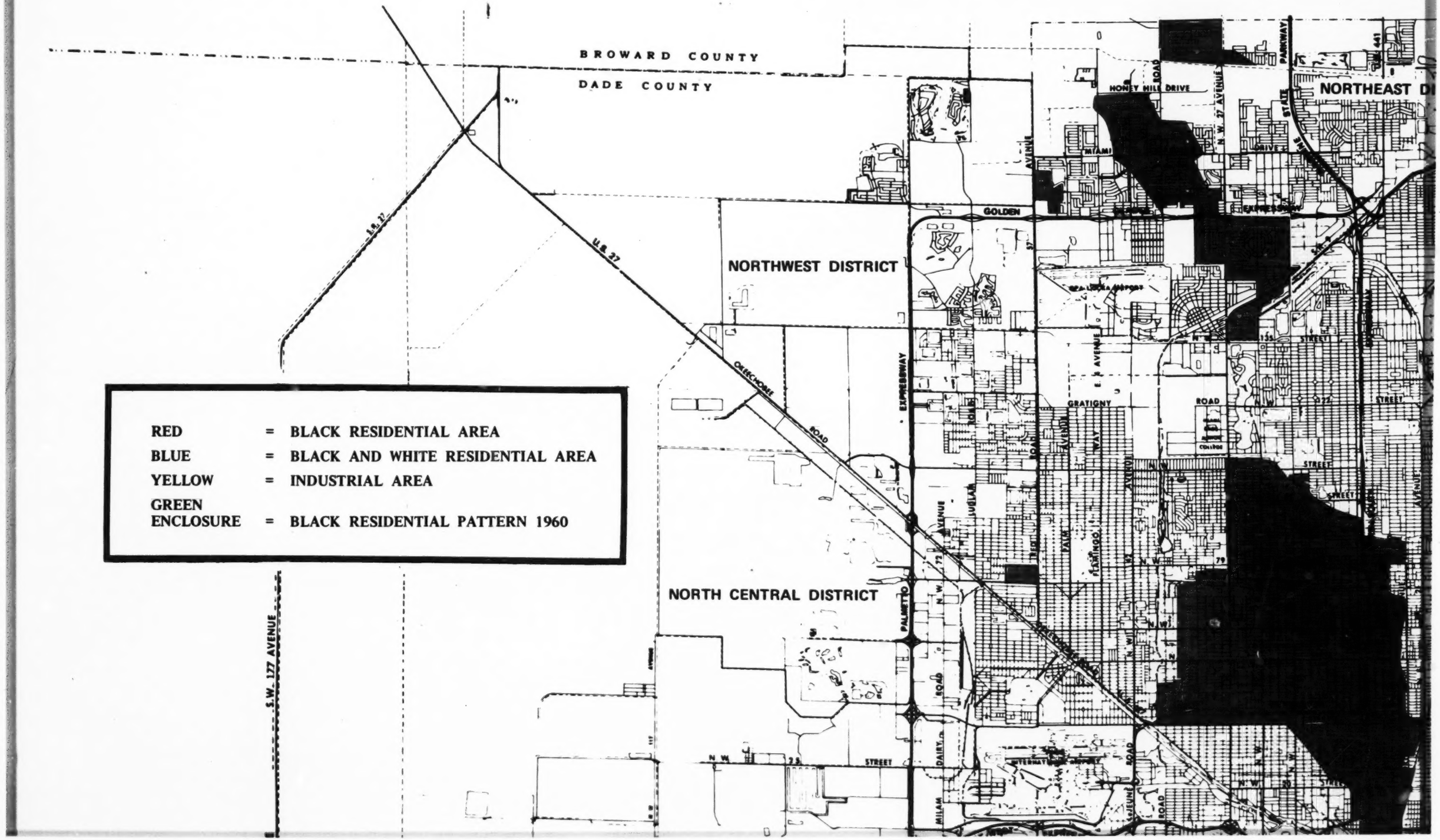
Read in conjunction with the language appearing in almost every Fifth Circuit opinion in school desegregation cases, this language can mean only one thing: that the bi-racial committee is intended to be advisory to the board and that the board should give its every assistance to the committee. However, it is also very clear that it is the responsibility of the district court to perform the actual selection of the membership. This has been done by the Court and the bi-racial committee that was commended to be established is in existence and functioning.

The Court, therefore, finds that there is no inconsistency between the language used by the two above-mentioned courts.

DONE AND ORDERED at Miami, Florida this 4th day of September, 1970.

/s/ C. Clyde Atkins

United States District Judge


BROWARD COUNTY
DADE COUNTY
U.S. 27
U.S. 27
NORTHWEST DISTRICT
NORTHEAST DI
NORTH CENTRAL DISTRICT
S.W. 177 AVENUE
RED = BLACK RESIDENTIAL AREA
BLUE = BLACK AND WHITE RESIDENTIAL AREA
YELLOW = INDUSTRIAL AREA
GREEN ENCLOSURE = BLACK RESIDENTIAL PATTERN 1960
HONEY HILL DRIVE
GOLDEN
GRATIGNY
ROAD
STREET
EXPRESSWAY
PALMETTO
EXPRESSWAY
N.W. 27 AVENUE
N.W. 22 AVENUE
N.W. 72 AVENUE
N.W. 79 AVENUE
N.W. 135 STREET
N.W. 119 STREET
N.W. 215 STREET
N.W. 25 STREET
N.W. 37 AVENUE
N.W. 42 AVENUE
N.W. 57 AVENUE
N.W. 67 AVENUE
N.W. 87 AVENUE
N.W. 97 AVENUE
N.W. 107 AVENUE
N.W. 117 AVENUE
N.W. 127 AVENUE
N.W. 137 AVENUE
N.W. 147 AVENUE
N.W. 157 AVENUE
N.W. 167 AVENUE
N.W. 177 AVENUE
N.W. 187 AVENUE
N.W. 197 AVENUE
N.W. 207 AVENUE
N.W.

DENTIAL AREA
WHITE RESIDENTIAL AREA
AREA

DENTIAL PATTERN 1960

BROWARD COUNTY

DADE COUNTY

NORTHWEST DISTRICT

NORTH CENTRAL DISTRICT

NORTHEAST DISTRICT

U.S. 27

OKEECHOBEE ROAD

GOLDEN GLADES INTERCHANGE

HONEY HILL DRIVE

N.W. 27 AVENUE

N.W. 199 STREET

N. 163 STREET

SUNNY ISLES CAUSEWAY

INTERCOASTAL

BROAD CAUSEWAY

79th STREET CAUSEWAY

I-195 JULIA TUTTLE CAUSEWAY

VENETIAN CAUSEWAY

EXPRESSWAY

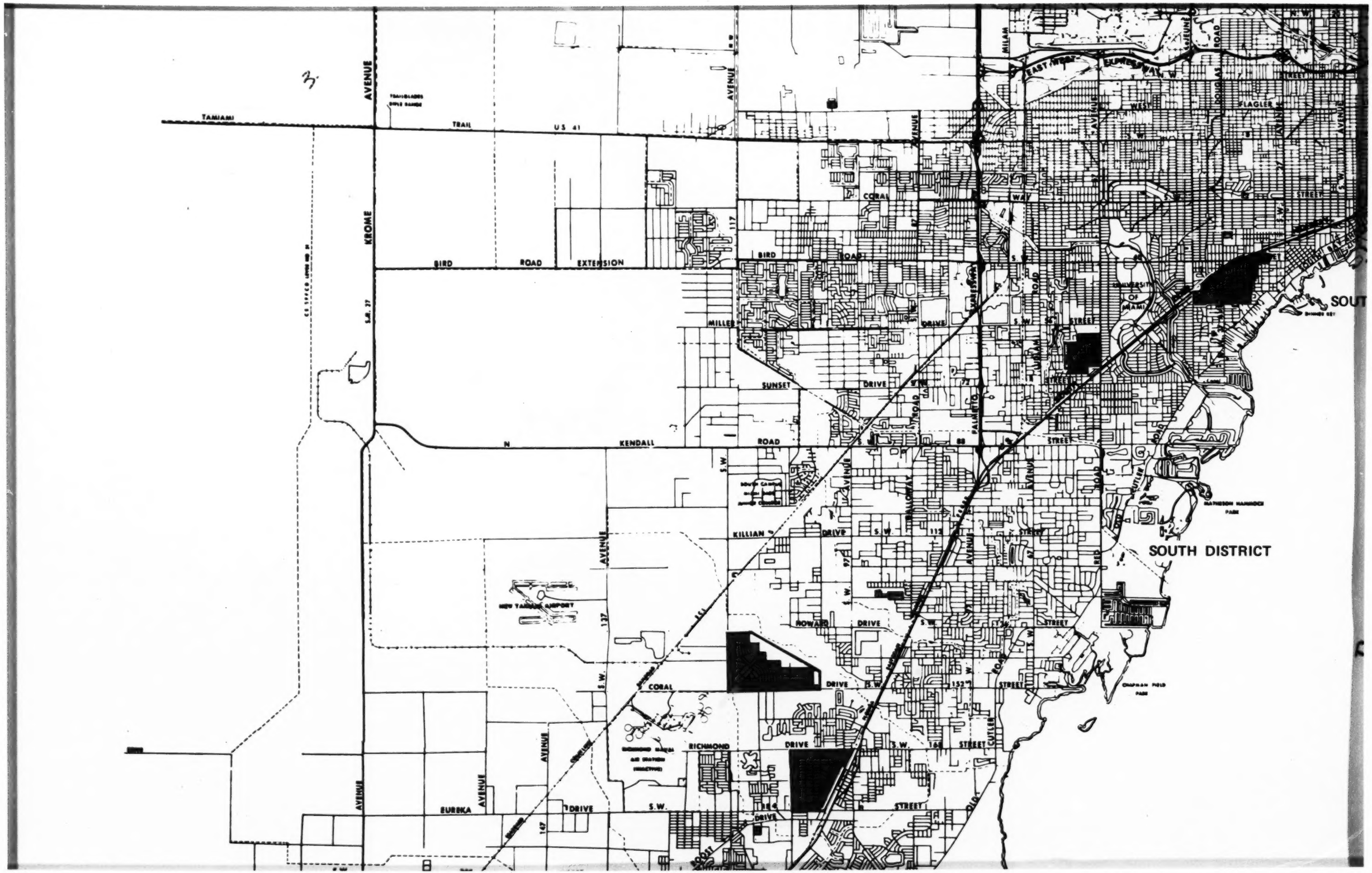
GRATIGNY ROAD

PALM AVENUE

PALMETTO EXPRESSWAY

MILAM DAIRY ROAD

EAST-WEST EXPRESSWAY

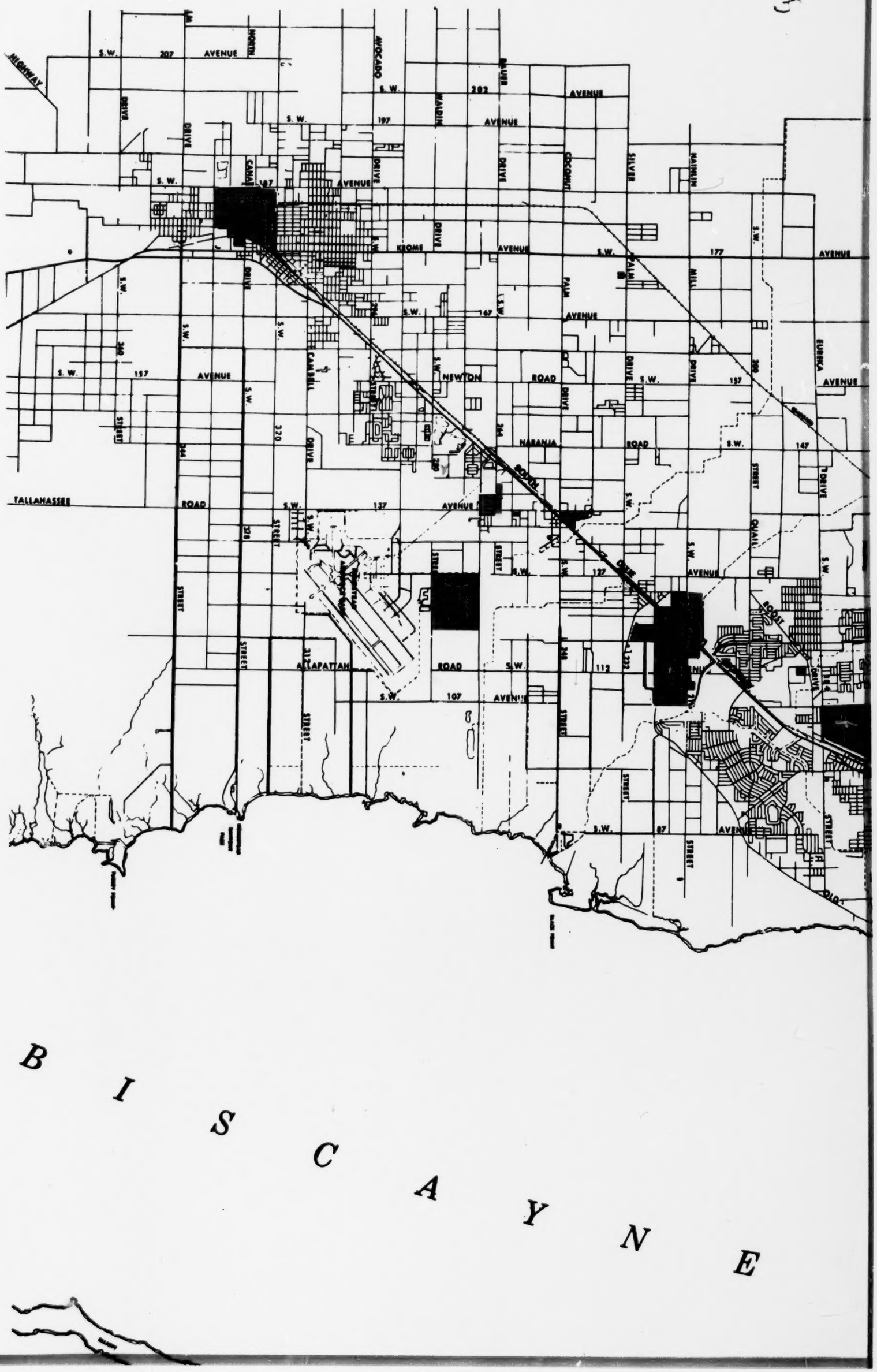

TAMIAMI
TRAIL
US 41
KROME
AVENUE
BIRD
ROAD
EXTENSION
CORAL
WAY
MILLER
DRIVE
SUNSET
DRIVE
KENDALL
ROAD
KILLIAN
DRIVE
HOWARD
DRIVE
CORAL
DRIVE
RICHMOND
DRIVE
EUREKA
DRIVE
FLAGLER
STREET
SOUTH DISTRICT

SOUTH CENTRAL DISTRICT

SOUTH DISTRICT

BAY

OCEAN


S.W. 207 AVENUE
AVOCADO
MALDEN
SILVER
PALM
MILL
EUREKA
KROME
NEWTON
ROAD
HABANA
QUAIL
CAMPBELL
TALLAHASSEE
ROAD
ALLAPATTAH
ROAD
S.W. 107 AVENUE
DRIVE
STREET
AVENUE
BISCAYNE

ALLAPATTAH
ROAD
AVENUE
STREET
DRIVE
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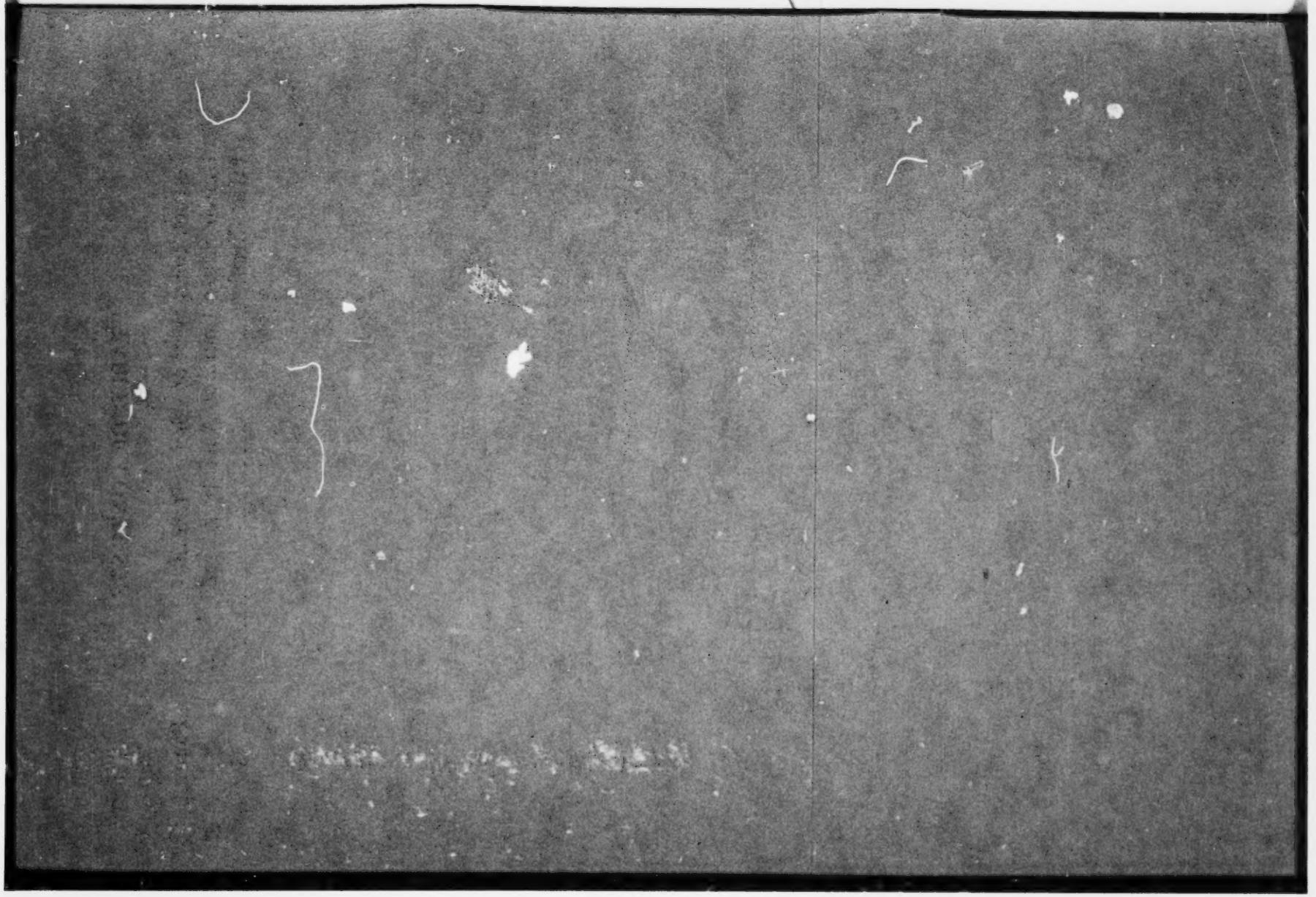

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in the
Supreme Court
of the
United States

October Term, 1970

No. _____

DADE COUNTY SCHOOL BOARD, et al.,
Petitioner,

vs.

HERBERT PATE, et al.,
Plaintiff-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari be issued to review the* United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on August 12, 1970.

* order of the

OPINIONS BELOW

The opinions of the Courts below directly preceding this petition are as follows:

1. Circuit Court of Appeals' Opinion and Order of June 5, 1970. (Appendix p. 76)[1]
2. Opinion and Order of June 26, 1970. (App. p. 20)
3. Opinion and Order of July 24, 1970. (App. p. 51)
4. Order of August 10, 1970. (App. p. 78)
5. Opinion and Order of the Court of Appeals filed August 12, 1970. (App. p. 3)

JURISDICTION

The Judgment of the Court of Appeals was entered on August 12, 1970 (Appendix p. 3). The jurisdiction of this Court is invoked under Title 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Whether, as a constitutional matter, any particular degree of racial balance must be achieved in the schools.

2. Whether the Circuit Court of Appeals may, summarily and without benefit of the complete record, substitute its judgment for that of the District Court.

3. Whether Congress has the power to define acts which comply with the 14th Amendment and whether such definitions are binding upon this Court.

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[1]The appendix of opinions below is printed in a separate volume because it is voluminous.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the equal protection clause of the 14th Amendment to the Constitution of the United States.

STATEMENT

1. INTRODUCTION

Petitioners are here seeking review of a decision of the United States Court of Appeals for the Fifth Circuit setting aside certain portions of an order of District Judge C. Clyde Atkins of the Southern District of Florida, the three-member panel consisting of Chief Judge BROWN, Circuit Judge MORGAN and Circuit Judge INGRAHAM. Brown, Morgan and Ingraham brushed aside the practical and educational factors as determined by the District Court and ordered massive rezoning, pairing and grouping throughout the Dade County School System to achieve a degree of racial balance; said order requiring extensive additional transportation to achieve such balance.

2. PROCEEDINGS BELOW

The Dade County School Board, unlike many southern boards, is in Federal Court as a result of its own positive action. In response to a directive issued by the Department of Health, Education and Welfare, the School Board was finalizing a plan for desegregation during the summer of 1969. An individual named Pate filed a suit in the State Court seeking to enjoin the School Board from implementing its desegregation plan. The Board petitioned to remove and the case was retained by the District Court after a motion for remand. [Order of District Court, January 26, 1970. (Appendix p. 124)].

The plan submitted contained this prefatory statement:

> "The Dade County School Board recognizes its affirmative responsibility to provide a desegregated, unitary and non-racial school system within which no person is to be effectively excluded from any school because of race or color, and it recognizes its responsibility to assign teachers without regard to race so that the schools throughout the system are not racially identifiable by their faculties."

The Petitioner submitted a residential-zone-of-attendance plan to the District Court. It eliminated all dual or optional attendance zones. Under this plan each student was required to attend the school serving his attendance zone except for compelling non-racial reasons. The plan contains some variations from the residential zones of attendance consisting of pairing of two elementary schools in the Hialeah area and two elementary schools in the South Dade area, the paired schools being located less than a mile apart in each instance.

The District Court, in an order dated January 26, 1970, (Appendix p. 124) held that a plan in which there remained 21 all-black schools did not meet the constitutional standards for a unitary school system. This holding was appealed by the Petitioner. The District Court also held that since there was no suitable plan available that the pupil assignment portion of the plan must be implemented by no later than September 1, 1970. This holding was appealed by defendants Love, et. al., seeking immediate implementation.

On February 17, 1970, the Court of Appeals in *Ellis v. Board of Public Instruction of Orange County, Fla.*, 423 F.2d(2) 203, recognized, in the urban context, that a plan in which some all-black schools remained met the requirements of a unitary school system. This rendered Petitioner's appeal moot. The petitioners Love, et. al., did not further prosecute their appeal and it became moot upon the closing of school, June 9, 1970.

The Court of Appeals, however, retained jurisdiction of the cause on its own initiative. (Order of June 5, 1970, Appendix p. 76).

As reflected in the findings of fact by the District Court in its Order of June 26, 1970, (Appendix p. 20), it was estimated that 244,000 students were expected to enroll in Dade County schools on August 31, 1970, of which 57,900, or 23%, would be black. There is no challenge to five of the six elements required to constitute a unitary school system. Only the criteria used in the assignment of pupils is challenged in this case.

The plan submitted by the Board allowed 20 schools to remain with 100% black enrollments. Additionally, there were to be 16 schools with various percentages of black enrollments ranging from 99% down to 85%. (Order of June 26, 1970, Appendix p. 20).

The District Court, in a series of orders dated June 26, July 24 and August 10, 1970, superimposed upon the Petitioner's residence-zone-of-attendance plan approximately eight modifications. (Appendix p. 20, 51, 78). The plan, as modified by the District Court, retained 22 schools which would have remained all or virtually all-negro (15% or less white), housing 44% of the negro school population. The judgment of the Fifth Circuit Court of Appeals superimposed 26 more schools upon the modifications approved

by the District Court. The Circuit Court of Appeals' modifications consisted of pairing, grouping and rezoning of schools. The Court of Appeals reduced the number of black students attending virtually-all-black schools from 44% to 24%. (Opinion August 12, 1970, Appendix p. 3). The Court of Appeals determined that a school was not desegregated unless populated by at least 15% the minority race of that school.

District Judge C. Clyde Atkins first heard testimony in the case in August of 1969, entering his initial opinion on August 29, 1969 (Appendix p. 118). Entering an order approving the interim plan submitted by the petitioner but requiring further reports to be made, the District Judge held additional hearings in January of 1970, resulting in his order of January 26, 1970, requiring the assignment of the teaching staff on the basis of the ratio of black teachers employed by the School System to white teachers so employed in each the elementary, junior high schools and high school levels. The next hearings conducted by Judge Atkins were on Jan. 30, Feb. 2, Feb. 3, April 16, May 22 and June 8, 1970, resulting in a series of orders of June 26, July 24 and August 10, 1970. Reports were required by the Court from the School Board throughout the course of the entire year as to matters pertinent to the process of desegregation of Dade County Schools, which reports were meticulously studied as well as the evidence taken before the District Judge prior to the entry of the last series of orders. The Court of Appeals entered its opinion and judgment on August 12, 1970, without the benefit of a transcript of the testimony taken in the case after Feb. 3, 1970, without the benefit of the submission of briefs or appendices, and without the submission of oral argument by counsel, exactly two days after the final action of the District Court.

3. THE DADE COUNTY SCHOOL SYSTEM

1969-1970

The petitioners presented to the District Court detailed evidence about the School System such as the number and location of the schools, the grades served, the kinds of programs offered, the racial distribution of students and faculties in the system and the changes which had occurred over the years. The petitioner showed also that the Dade County School System was severely impacted by the arrival of great numbers of Cuban refugees, many of whom were non-English-speaking. The petitioner showed that in the nearly one decade from 1960 when the Cuban in-migration commenced, a system for handling non-English-speaking students had been devised and that a number of the schools in Dade County were established as Cuban orientation schools — schools in which English was taught as a second language, schools in which there were special staffs in attendance to expedite the procedure of orienting non-English-speaking students and melding them into the school system without unduly damaging the educational process for the native-born Americans. (App. p. 142 July 6, 1970 Report). The petitioners showed by expert testimony that there were many portions of the urban areas of Dade County in which the pairing or grouping of schools would create almost insurmountable problems concerning the danger to children of tender years in attendance at such schools. (App. p. 51 July 24, Order). The petitioners also showed that the population of Dade County contained in certain areas large pockets of negroes, said negro residential areas being densely populated, and one such area extending 50 blocks north and south and 30 blocks east and west, in which there were located 18 ele-

mentary and junior high schools plus one senior high school. (Appendix p. 239). The testimony submitted indicated that the racial segregation of population in Dade County was not the result of man-made laws. (App. p. 129 See Exhibit #10, 1970).

The Court, carefully considering the voluminous evidence before it, made extensive findings of fact, required numbers of special reports to be submitted by the School Board staff, and in a series of orders reflected a comprehensive analysis of the submissions of evidence by the parties. The Court of Appeals has accepted the District Court's findings (compare Order of June 26, 1970, with Opinion of August 12, 1970, Appendix P. 20 and 3) and has not found the District Court's conclusions to be clearly erroneous. The Court of Appeals struck down the School Board's plan and the modifications of the District Court thereto, out of its fascination with the prospect of reducing the number of black students in all-black schools or virtually-all-black schools to less than 25%. The Court of Appeals, supporting the District Court, has also made a finding (Opinion August 12, 1970, Order July 24, 1970) that a school which is populated by less than 15% of the minority race attending such school is a school which is not desegregated. The Dade County School System serves nearly a quarter of a million pupils. The District Court, on February 3, 1970 (App. p. 138), made findings of fact accepted by the Circuit Court of Appeals that of the 244,000 students expected in the 1970-1971 school year, that 57,911 would be black; that of 218 schools, 148 would be integrated; and that the racial composition of the student bodies of 20 of these schools would be all-black; that the 20 all-black schools are located where a high concentration

of black people live; that the desegregation of the 20 all-black schools would require transportation beyond the attendance zones established for those schools; that by transporting 14,000 students five to six miles, one all-black high school and four all-black junior high schools could be integrated; that the transportation costs, exclusive of acquisition of buses, were between $50.00 and $75.00 per pupil; and that the Board has utilized its allotted full tax millage and is urgently in need of more funds. The District Court also made a finding with regard to the Cuban orientation schools and in the main refused to pair them with all-black schools, making a finding of fact that to do so might create a school which to outward appearances was integrated but which would be segregated by language from within. (See order of July 24, 1970, Appendix p. 51). The District Court did not find that residential patterns leading to segregation in the schools resulted from federal, state and local governmental action. The only evidence before the Court was that there was no statute on the books of the State of Florida, no ordinance on the books of the County of Dade, and no ordinance on the books of the major municipalities of the county which require any person to live in any particular area of the community because of race or color. (Exh. 10 App.endix p. 129). It should be noted that the objectors to the School Board's plan in the District Court offered no alternative plan for the desegregation of the Dade County schools, and that the Court of Appeals, without the benefit of the entire record, brushed aside the findings and consideration of the District Court and, engrossed with statistics, ordered massive pairings and groupings of schools in an attempt to achieve a degree of racial balance.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

This case merits review on certiorari because it involves important legal questions of implementation under *Brown v. Board of Education*, 347 U.S. 483 (1954) and 349 U.S. 294 (1955), and because it will have important consequences and lay out guidelines with respect to future school desegregation. The major questions presented are the related issues about the proper formulation of specific desegregation goals and the proper standard for appellate review of a decision on the feasibility of a desegregation plan. The case also merits review upon the question of procedural due process. Was it accorded the petitioner where the Court of Appeals reversed the lower court two days after its final order without considering a complete record from the District Court.

There should be no constitutional concern with the degree of desegregation achieved by the plan. This Court should consider whether any particular degree of racial balance is required in a school to constitute a desegregated school.

I.

CONSTITUTIONAL OBLIGATION TO CORRECT IMBALANCE

1. WHETHER, AS A CONSTITUTIONAL MATTER, ANY PARTICULAR DEGREE OF RACIAL BALANCE MUST BE ACHIEVED IN SCHOOLS.

If there is a constitutional obligation to correct the racial imbalance which exists in the public schools of some communities, it must be derived from the mandate of the 14th Amendment which prohibits state governments from denying any of its citizens equal protection of the laws. Thus, it must be determined first that the inaction of state government is responsible for the creation and maintenance of imbalanced schools, and second, that the creation and maintenance of such schools amounts to a denial of equal protection of the laws. Governmental responsibility for the imbalance is determined in those instances in which the government, i.e., school board, provides a system for freedom of transfer for whites and restriction of transfer for blacks. Evidence of governmental involvement may be shown by the active gerrymandering of (the) zones of attendance by a School Board. However, governmental responsibility is absent where fair and impartial zones of attendance are established which can, to the highest practicable degree, provide for desegregation of the races in the public schools (rule of reason). The use of geographic criteria in a fair manner does not produce any aura of governmental culpability or responsibility. However, geographic criteria, improperly used, such as gerrymandering, or disregard of results, can

cause a suspicion of governmental responsibility. It is necessary in order for the school board to be held to be at fault that a claimant show that the Board consciously avoided the more rational alternatives. *Green v. County School Board of New Kent County* 391 U.S. 430 (1968). School Board involvement cannot be inferred from a failure of governmental agencies to prohibit racial discrimination in housing and employment since these are factors over which the school board has no control. There is no governmental involvement in the insertion of racial clauses in deeds by land developers. These restrictions cannot be credited to the public authority, especially since 1948, the year in which *Shelley v. Kraemer*, 334 U.S. 1 (1948), was decided.

Again, when we consider racial imbalance, we are confronted with the problem of the courts in defining what is socially desirable rather than what is constitutionally mandated. The constitutional principle of equality of educational opportunity is met by a school system which has carefully studied the alternatives and has produced geographic criteria in designating zones of attendance.

Certainly there is equality of educational opportunity if each child may attend a school in his zone of residence as a matter of right and, also, where each child may transfer out of a school in which his race constitutes the majority to a school in which his race constitutes the minority. The opportunity of attending a desegregated school is thereby guaranteed to all. Equality of educational opportunity becomes even more apparent when consideration is given the fact that in this school system faculty assignments are on the basis of a direct ratio of the number of blacks to whites employed in each of the three categories

of instructional personnel — elementary, junior high school and senior high school.

The remedy prescribed by the 14th Amendment is not one that is punitive, or in any way seeks retribution for past sins. It merely requires that every child have equal opportunity for education. It requires that no child be effectively barred from attendance at any school because of race or color. *Alexander v. Holmes*, 396 U.S. 19 (1969).

It is submitted that in a school system such as Dade County's, where the boundary lines for the zones of attendance are drawn without regard to race or color and where zones of dual or optional attendance have been eliminated, and where there has been established a system of teacher assignment based on the ratio of black to white in each school of the system, and where there is no discrimination claimed or shown by any of the parties to this suit with regard to transportation, extra curricular activity and the selection of sites for new schools, that there can be no doubt that the last vestiges of the dual system have been eliminated, root and branch.

The Court of Appeals cites the case of *United States v. Indianola Municipal Separate School District*, 410 F.2d 626, 628 (5th Cir. 1969) in which the school board urged certain problems as natural barriers, the existence of a swamp for the laying of its boundary lines in a plan which had zones of attendance and a freedom of choice. It is submitted that this is a gross misapplication of law. To compare a metropolitan system in which there is substantial desegregation, in which 155 of the 218 schools in the community accommodate both black and white, with a rural county system in which there are four schools,

two all white and two all black, is obviously improper. (Appendix p. 82). The language in *Indianola* states that the obstacles to implementation of the HEW plan "cannot be accepted if the (board's) plan's implementation fails to result in substantial desegregation." Certainly this is true in a case where there is no desegregation of the public schools by the plan.

It is submitted that the Court must recognize, as did *Ellis v. The Board of Public Instruction of Orange County, Florida*, 423 F.2d 203 (5 Cir., 1970), as did *Deal v. Cincinnati*, 419 F.2d 1387 (1969), as did *Board of Public Instruction of Duval County, Florida v. Braxton*, 402 F.2d 900 (5 Cir. 1968), that there are urban areas in which the problems of desegregation vary materially and vastly from those of rural school districts. The Court must recognize that there is a difference in the decision and the pronouncements laid down for such rural areas and in larger metropolitan areas of the country.

It is time that the *de facto-de jure* myth be laid to rest by this Court. While it is true that in most southern states, including Florida, there have been laws requiring separate educational facilities for black and white, miscegenation laws and certain discriminatory public facilities laws, there has never been in Florida a statute requiring the residence of blacks or whites in any particular sector of any community in the state. Likewise, there has never been an ordinance in Dade County, the City of Miami, the City of Coral Gables or the City of Miami Beach, the principal cities of Dade County, which requires black people to live in one sector of town and whites to live in another. See Exhibit #10, February 2, 1970 (App. p. 129)

It is submitted that there have been no such discriminatory laws in existence for many years in the northern cities which have had segregation problems, namely, Cincinnati, Gary, Cleveland, New York, Philadelphia and others.

However, let us observe what has happened to the racial patterns both in Dade County and in these northern cities. Racial patterns of residence have been set up regardless of the existence or absence of discriminatory laws. It is interesting to compare Cincinnati with Dade County, and the statistics concerning Cincinnati are taken from the case of *Deal v. Cincinnati*, 419 F.2d 1387 (1969). In Dade County there had been discriminatory laws in existence. In Cincinnati there had been no discriminatory laws on the books of the State of Ohio for more than one hundred years at the time of the decision in *Deal*.

What happened in Dade? The vast majority of the blacks resided in all-black residence patterns.

What happened in Cincinnati? The vast majority of the blacks resided in all-black residential patterns.

Surely, since these patterns of residence are repeated over and over again in the urban areas both in the north and in the south, the Court must recognize that ethnic groups have historically clung together. It is submitted that ethnic groups of all kinds have traditionally adopted patterns of residence which bear no relationship to the laws made by governments.

Does the Constitution command that the black and white children be distributed throughout the school system

according to the ratio of black pupils to the total number of students in the school system in each school? This is not the case. In the case of assignment of teachers, the rationale of racial assignments is to assure equality of educational opportunity. It is submitted that equality of educational opportunity is what is mandated by the 14th Amendment and not racial balance in each school in a school system. The rationale present in the assignment of teachers is absent in the assignment of school children. If the Court seeks to remedy imbalance of the races in attendance in each of the schools of a school system, certain basic constitutional rights of children involved are violated.

It is submitted that the pairing or grouping solution to this problem is at best a stopgap which seeks to impose upon school boards the total solution of a problem created by other factors than those under the control of the school systems. There are strong reasons which support the neighborhood school concept in the United States, and as is stated in *Deal v. Cincinnati*, supra at p. 1391:

> "The neighborhood system is in wide use throughout the nation and has been for many years the basis of school administration. This is so because it is acknowledged to have several valuable aspects which are an aid to education, such as the minimization of safety hazards to children reaching school, economy of costs in reducing transportation needs; ease of pupil placement and administration through the use of neutral, easily-determined standards and better home-school communication."

Deal also held that the constitution imposes no duty to bus whites and negroes away from the districts of their

residences in order that racial complexion should be balanced and that such busing violates the rights of negro and white alike.

In *Deal* as in the present case, there was a high correlation in the distribution of negroes throughout the school system to the general neighborhood residential patterns. There were in *Deal*, as there are in Dade County, many areas formerly predominately white which have changed to predominately negro by the movement of negroes into the new neighborhoods and this is reflected in the increase in the number of negro children attending schools there. (Appendix, p. 239).

In the case of *Northcross v. Board of Education of City of Memphis, Tenn.*, 302 F.2d 818 (6th Cir., 1962) cert den. 370 U.S. 944, it was stated: (p. 823):

> "Minimal requirements for non-racial schools are geographic zoning according to the capacity and facilities of the buildings, and admission to a school according to residence as a matter of right."

There is conflict in the Fifth Circuit as evidenced by the decision in the present case contrasted with *Adams v. Mathews*, 403 F.2d 181, (5th Cir., 1968), which stated: (p. 188)

> "If, in a school district, there are still all negro schools or only a small fraction of negroes enrolled in white schools, and no substantial integration of facilities and school activities, then, as a matter of law the existing plan fails to meet the constitutional standards as established in *Green*."

In the instant case, the Fifth Circuit approved the plan with modifications in which there remained, according to its own sophisticated manner of determination, some 14 all-black schools.

Adams, of course, involved 40 rural school districts. In all of these counties, little or no progress has been made in the desegregation of schools at the time of the opinion. In most of them no progress whatsoever has been made prior to the 1964 Civil Rights Act. A vast majority of the districts had been in litigation brought by black plaintiffs or by the United States Attorney and had been in litigation for many years. All had plans and counter-plans in existence as submitted either by local board, HEW, or the area desegregation center. It is submitted that none of the last delineated facts apply to Dade County, a county which had commenced its efforts in desegregation as early as 1959, which had at the commencement of the 1968-1969 school year 134 integrated schools, a community which has led the state and the south in its effort to desegregate schools. (Appendix p. 133-135). It is submitted that the language contained in *Adams* applied to districts which might be similar to New Kent County. Virginia, but not to an urban area containing resident patterns of black and white and mixed, such as Dade County. It must be read into that decision that the language above-quoted applies only to counties falling in the category of those involved in *Adams*.

Therefore, it is submitted that if the courts concern themselves with any particular degree of racial balance, the federal judiciary will engage in a gigantic numbers game, the result of which no one can predict.

II.

DUE PROCESS

WHETHER THE CIRCUIT COURT OF APPEALS MAY SUMMARILY AND WITHOUT BENEFIT OF THE COMPLETE RECORD, SUBSTITUTE ITS JUDGMENT FOR THAT OF THE DISTRICT COURT.

This case was appealed to the Court of Appeals on January 26, 1970, by the Intervenors LOVE, et al., the style of the case being: ALICE LOVE, et al., Intervenors-Appellants, vs. DADE COUNTY SCHOOL BOARD, et al., Defendants-Appellees, No. 29179.

The thrust of Love's appeal was that the pupil desegregation portion of the plan should be implemented immediately.

On January 30, 1970, the Petitioner filed a Cross Appeal challenging that portion of the District Court's order which held that a plan in which there would remain 21 all-black schools fails to meet the constitutional requirements for a unitary school system. The Petitioner's appeal was rendered moot with the rendition of the *Ellis* decision, supra, the 5th day of June, 1970.

The Love appeal was rendered moot by the closing of school and due to the fact that counsel for Love did not continue with the steps in appealing as required by the Rules of Appellate Procedure as amended by *Singleton.*

The Fifth Circuit, however, regardless of the abandonment of these appeals on June 5, 1970, issued a mandate retaining jurisdiction of the case and ordering the District Court to submit to it the final plan for desegregation when approved by the District Court.

Shortly after the order of June 26, 1970 (Appendix p. 20), Appellant Love filed an additional appeal, the notice of appeal being dated July 15, 1970. However, subsequent to the filing of said appeal, the Court entered its order of July 24, 1970 (Appendix p. 51) and subsequent to that entered its order of August 10, 1970 (Appendix p. 78) finalizing the approval of a plan for desegregation of the Dade County Schools.

The Fifth Circuit entered its opinion, mandate and order on opinion on August 12, 1970 (Appendix p. 3).

There was, at this time, no pending appeal save and except that of the Intervenors LOVE, et al., no record had been compiled and sent to the Court of Appeals by any litigant and no transcript of testimony had been written up subsequent to the hearing of February 3, 1970, although testimony had been taken in hearings conducted on March 13, 1970, April 2, 1970, May 11, 1970, May 22, 1970, June 8, 1970, June 12, 1970, July 13, 1970, and July 31, 1970.

The case of *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 22, set a dangerous precedent when it ordered the Court of Appeals to oversee the progress of desegregation in various school districts in the Fifth Circuit. In this case this Court said that while a school system is being operated as a unitary system,

a district court may hear and consider objections or proposed amendments, provided, however, that the Court of Appeals' order shall be complied with in all respects. The case further provided "that no amendment shall become effective before being passed upon by the Court of Appeals."

In Paragraph 4 of the opinion the following language appears:

> "The Court of Appeals shall retain jurisdiction to insure prompt and faithful compliance with its order, and may modify or amend the same as may be deemed necessary and desirable for the operation of a unitary school system."

It is apparent that in the present case the Fifth Circuit was attempting to comply with *Alexander v. Holmes*, supra, and to supervise the desegregation process in Dade County. However, this Court has with a very few words struck at the very core of the judicial system of the United States rendering a Court of Appeals as an administrative body, granting it power to supervise the desegregation process regardless of whether or not an appeal has been perfected, and in the case of the Fifth Circuit in the present case, given them the impression that they had the right to reverse the findings of the District Court where no appeal was pending, where no complete record was present for contemplation by the Court, and without briefs or oral argument.

The language of *Carter v. West Feliciana Parish School Board* and *Singleton v. Jackson Separate School District*, 396 U.S. 290 24 L.Ed. 477, 480, 481 (1970), is

interesting to note the dissent of Chief Justice Burger and Mr. Justice Stewart:

> "We would not peremptorily reverse the judgments of the Court of Appeals for the Fifth Circuit. That Court, sitting en banc, and acting unanimously after our decision in *Alexander v. Holmes County Board of Education*, 396 U.S. 19, has required the respondents to effect desegregation in their public schools by February 1, 1970, save for the student bodies which are to be wholly desegregated during the current year — no later than September. In light of the measures the Court of Appeals has directed the respondent school district to undertake, with total desegregation required for the upcoming school year, we are not prepared summarily to set aside its judgments. That Court is far more familiar than we with the various situations of the several school districts, some large, some small, some rural, some metropolitan, and has exhibited responsibility and fidelity to the objectives of our holdings in school desegregation cases. To say peremptorily that the Court of Appeals erred in its application of the *Alexander* doctrine to these cases and to direct summary reversal without argument and without opportunity for exploration of the varying problems of the individual school districts seems unsound to us."

That dissent can be applied almost directly to the actions of the Fifth Circuit in peremptorily reversing the District Court.

The problem stems not so much from a willfulness on the part of the Fifth Circuit Court of Appeals but with the precedent set in *Alexander v. Holmes County*, supra, it is submitted that it is illogical and unsound to constitute the Courts of Appeal as administrative bodies. It is a sounder judicial procedure to leave the finding of facts to the lower court, and reserving the Court of Appeals review based upon proper standards of appellate procedure, namely error in the finding of facts or misapplication of the law to the facts of the case.

If this court intended to so constitute the Circuit Courts of Appeal, then such decision should be repudiated. While the doctrine of stare decisis is important in most fields of law, it has never been strictly applied in the field of constitutional law. See *Glidden Company v. Zdanok*, 370 U.S. 530 (1962).

Decisions of *Holmes*, supra, *Singleton*, supra, and *Green*, supra, have directed the Courts of Appeals to abandon the precedent of acting "with all deliberate speed" enunciated in *Brown II* and to act immediately so that the Court seems to have placed haste before any and all other considerations in school cases. Examples are the error created by premature decisions by the Fifth Circuit found in the case of *Valley v. Rapides Parish School Board*, Slip Decision No. 29237, ____ F.2d ____, of March 2, 1970, in which the Court found the plan of January 16 as amended by an order of January 30, 1970, to be constitutionally unsound; however, after submitting its March 2, 1970 opinion found that the lower court had approved another plan on February 24, 1970, therefore had to withdraw the March 2, 1970 opinion and substituted *Valley v.*

Rapides Parish School Board, Slip Decision 29237 of March 6, 1970, in its place. The Court had entered an opinion without the benefit of the record.

In the case of *Bradley v. Pinellas County*, Slip Decision No. 28639, ____ F.2d ____, of July 1, 1970, the Fifth Circuit in its haste to implement a policy of desegregation, acted prematurely in rendering its decision based on the population maps of earlier years so that upon petition for rehearing the Fifth Circuit was again forced to recall its opinion and to change it in compliance with the current record. (See *Bradley v. Pinellas County*, Slip Decision No. 28639, of July 29, 1970, ____ F.2d ____.) The case of *Ross vs. Eckels* (Slip Opinion No. 30080, August 25, 1970, ____ F.2d ____) was another case which was hurriedly considered just prior to the opening of the 1970-1971 school session. As was stated in a dissent by Circuit Judge Clark:

> "Since abuse of discretion is this circuit's test for the validity of a district court's school plan, *Harvest v. Bd. of Pub. Instruc. of Manatee Cty, Fla.*, ____ F.2d ____ (5th Cir. 1970) [No. 29425, June 28, 1970], I believe we err when we substitute our judgment, based upon documents and maps, for that of the district court whose decision is based upon flesh and blood contact with the real people and actual problems of this district. *See Carr v. Montgomery Cty. Bd. of Educ.*, ____ F.2d ____ (5th Cir. 1970) [No. 29521, June 29, 1970]."

Judge Clark stated further, in Slip Decision No. 30080, at Page 23:

> "There is only one answer. It is rapidly becoming apparent that despite express disclaimers [*See Singleton v. Jackson Municipal Separate School Dist.*, ____ F.2d ____ (5th Cir. 1970) [No. 29226, August 12, 1970] [Footnote 5, Slip Op., p. 4]], the special school case panels of this circuit are now out ahead of the requirements laid down by the Supreme Court and have adopted *sub silento* some unmentionable standard of numerical pupil racial balance to govern the affirmance or reversal of school case decisions.[1] For the good of the schools and pupils of this circuit, I for one do not understand why the 'magic figures' must remain a mystery enshrouded in nebulous phrasing that says that the plan adopted is 'ineffective' or 'unacceptable'.

The logic of this dissent is impeccable when he indicates that there will never be an end to the litigating of such "numbers game" cases. The principle underlying the reversal in *Ross v. Eckels* was that the indicated school system did not achieve that degree of racial balance that some of the judges of the Circuit have declared is "enough".

A Court of Appeals errs when it substitutes its own findings for that of the District Court and such ruling is premature where neither the revised plan nor the revised school zones and updated enrollment figures ordered filed by the lower court were properly before the Court of Appeals for review. *Northcross v. Bd. of Education of Memphis*, ____ U.S. ____, 25 L.Ed.2d 246.

"[1]The most recent of these opinions are collated in *Allen v. Bd. of Public Instruc. of Broward Cty.*, ____ F.2d ____ (5th Cir. 1970) [No. 30032, August , 1970]."

This Court must, at this time, determine the true goals for desegregation. If it is to be simply that it should be a school system in which no person is barred from attendance at the school of his choice because of race or color, then this must be reaffirmed by the Court. If the Court is to rule that the Constitution is concerned with the percentages which apparently have engrossed the Fifth Circuit Court of Appeals then it is time that the guidelines be laid down so that the school districts may plan with precision and not by "some unmentionable standard of numerical pupil racial balance."

III.

CIVIL RIGHTS ACT OF 1964

3. WHETHER CONGRESS HAS THE POWER TO DEFINE ACTS WHICH COMPLY WITH THE 14TH AMENDMENT AND WHETHER SUCH DEFINITIONS ARE BINDING UPON THIS COURT.

Section 401, 42 U.S.C. 2000 (c) provides the definition of desegregation as follows:

> " 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion or national origin, 'desegregation' shall not mean the assignment of students in order to overcome racial imbalance."

Section 407, 42 U.S.C. 2000 (C) (6) further defines desegregation as follows:

> ". . . provided that nothing herein shall empower any official or court of the United States to issue any orders seeking to achieve a racial balance

> in any school by requiring the transportation of pupils or students from one school to another or from one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

These provisions enacted by Congress effectively limit the definition of desegregation which may be promulgated by the courts. The question is, then, are such statutory provisions enacted by Congress binding upon the Supreme Court and other Federal courts. The answer is yes. The 13th, 14th and 15th Amendments are unique in the Constitution in that after providing for substantive provisions, each contains a grant of power of enforcement. Section 5 of the 14th Amendment constitutes a grant of power to the Congress. It is as follows:

> "Congress shall have power to enforce by appropriate legislation the provisions of this Article."

This grant of power, the Courts have held, gives Congress the power to determine for itself what patterns of activity contravene the 14th Amendment rights. It follows logically that if the Congress has the power to determine what activities contravene the 14th Amendment, Congress has the power to define actions which comply with the 14th Amendment. See *U.S. v. County Board of Elections of Monroe County of New York*, 248 F.Supp. 316, a case in which a three-judge panel held as follows:

> "Inherent in the power to enforce the 14th Amendment, Congress must be considered as having some latitude to determine for itself what

> patterns of activity contravene the 14th Amendment rights."

Thus, Congress had the power to determine a state-imposed restriction on the right to vote to those who could read, write and interpret the English language to be violative of the 14th Amendment because in its own enactment Congress had stated that a person was entitled to vote who had attended through the 6th grade in Puerto Rico in a public school in which the language was other than the English language, the party of the suit having completed the 9th grade in Puerto Rican schools but being unable to read or write the English language. Thus a state statute was overturned by Congressional act under the authority of Section 5, of the XIV Amendment. Affirmed sub nom *Katzenbach v. Morgan*, 384 U.S. 641 (1966). Now, does Congress have the power to declaim by legislation its disagreement of the Supreme Court's constitutional interpretation? This Court said yes, in the case of *Glidden Company v. Zdanok*, 370 U.S. 530 (1962). In this case the Supreme Court had reversed its earlier holdings in which the United States Court of Claims had been held not to be constitutional courts. Subsequent to the earlier case Congress enacted a provision as follows:

> "Such court is hereby declared to be a court established under Article III of the United States Constitution."

The Supreme Court in *Zdanok* gave credence and special weight to the Congressional enactment reversing its earlier decisions in this regard. Therefore, it is submitted that this Court has ample precedent that Section 407, 42 U.S.C. 2000 (C) (6) governs.

CONCLUSION

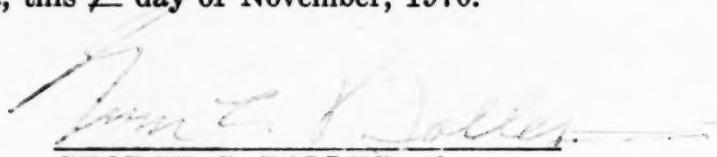
For the foregoing reasons it is respectfully submitted that the petitioner's writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

GEORGE C. BOLLES, of
Bolles, Goodwin, Ryskamp & Ware
Attorney for Petitioners
401 City National Bank Building
Miami, Florida 33130

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petition for a Writ of Certiorari To the United States Court of Appeals for the Fifth Circuit was mailed to the following list of attorneys of record in this cause, this 4 day of November, 1970.



GEORGE C. BOLLES, of
Bolles, Goodwin, Ryskamp & Ware
Attorneys for Petitioners
401 City National Bank Building
Miami, Florida 33130

Richard Yale Feder, Esq.
11th Floor
Roberts Building
Miami, Florida 33130

William A. Frieder, Esq.
8851 S.W. 92 Avenue
Miami, Florida 33156

James W. Matthews, Esq.
Matthews, Braynon & Mapp
5022 N.W. Seventh Avenue
Miami, Florida 33127

James E. Glass, Esq.
Ainsley Building
Miami, Florida 33132

Hilery F. Silverman, Esq.
1406 Biscayne Building
Miami, Florida 33130

Hon. Claude R. Kirk, Jr.
Governor of Florida
The Capitol
Tallahassee, Florida 32304

Hon. Earl Faircloth
Attorney General of Florida
The Capitol
Tallahassee, Florida 32304

Thomas H. Anderson, Esq.
Shutts & Bowen
1000 First National Bank Bldg.
Miami, Florida 33131

Rivers Buford, Esq.
General Counsel
State Board of Education
Tallahassee, Florida 32304

Howell L. Ferguson, Esq.
Legal Services Program, Inc.
3600 Grand Avenue
Miami, Florida 33133

CERTIFICATE OF SERVICE (cont.)

Larry S. Stewart, Esq.
Frates, Fay, Floyd & Pearson
Concord Building
Miami, Florida 33130

Tobias Simon, Esq.
223 S.E. First Street
Miami, Florida 33131

Daniel Neal Heller, Esq.
Attorney at Law
1205 Ainsley Building
Miami, Florida 33132

Lane & Mitchell
902 Roberts Building
28 West Flagler Street
Miami, Florida 33130

William M. Manker, Esq.
Manker & White
1004 Northeast Airlines Bldg.
Miami, Florida 33132

William L. Gray, III, Esq.
Blackwell, Walker & Gray
100 N.E. First Avenue
Miami, Florida 33130

J. E. Ludick, Esq.
Ludick, Hunt & Hamilton
12595 N.E. Seventh Avenue
Miami, Florida 33161

Aaron A. Foosaner, Esq.
Foosaner, Barest & Hamilton
Roberts Building, Penthouse 1
Miami, Florida 33130

Robert R. Frank, Esq.
Frank, Stralkow & Marx
1335 Lincoln Road
Miami Beach, Florida 33139

Paul B. Steinberg, Esq.
350 Lincoln Road
Miami Beach, Florida 33139

Henry A. Edgar, Jr., Esq.
Ward & Ward
1240 DuPont Building
Miami, Florida 33131

Mr. Alan H. Rosenson
4090 Battersea Road
Coconut Grove, Florida 33133

Wicker, Smith, Pyszka,
Blomqvist & Davant
Biscayne Building
Miami, Florida 33130

Hon. William C. Cramer
U. S. House of Representatives
2370 Rayburn Office Building
Washington, D.C. 20025

SUPREME COURT, U. S.

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in the Supreme Court of the United States

OCTOBER TERM, 1970

No. 936

DADE COUNTY SCHOOL BOARD, et al.,
Petitioner,

vs.

HERBERT PATE, et al.,
Plaintiff-Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS ALICE LOVE ET AL. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

ALFRED I. HOPKINS
c/o A.C.L.U. of Florida
1701 Meridian Avenue
Miami Beach, Florida 33139

MAURICE ROSEN
c/o A.C.L.U. of Florida
16924 N. E. 19th Avenue
North Miami Beach, Florida

JAMES W. MATTHEWS
5022 N. W. 7th Avenue
Miami, Florida

IRMA ROBBINS FEDER and
RICHARD YALE FEDER
c/o A.C.L.U. of Florida
11th Floor, Roberts Building
28 West Flagler Street
Miami, Florida 33130

Attorneys for Respondents

MIAMI REVIEW — 371-4853 — 377-3721

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR RESPONDENTS ALICE LOVE ET AL. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The significant opinions of the Courts below, taken chronologically, are as follows:

The August 29, 1969 "Order [of the District Court] Approving Interim Desegregation Plan for Dade County Public Schools" is reported at 303 F.Supp. 1069, is not included in the separate Appendix to the Petition, and appears in Respondents' Appendix attached hereto (Resp. App. p. A1).*

The December 10, 1969 "Order [of the District Court] —Supplement to and Modification" thereof is reported at 307 F.Supp. 1288, is not included in the Petitioners' Appendix, and appears in Respondents' Appendix (Resp. App. p. A 8).

The January 8, 1970 "Order [of the District Court] on Motion for Clarification" is not reported, is not included in the Petitioners' Appendix, and appears in Respondents' Appendix (Resp. App. p. A 14).

The January 26, 1970 "Order [of the District Court] Approving Teacher Integration Plan and Denying Motion by Intervenors for Immediate Pupil Desegregation" is not reported, appears in Petitioners' Appendix (Pet. App. pp. 124-128), and appears in Respondents' Appendix (Resp. App. p. A 20).

The June 5, 1970 Order and opinion of the Court of Appeals, remanding Respondents' appeal and Petitioners' cross-appeal (*inter alia*) from the January 26, 1970 order of the District Court, is not reported and appears in Petitioners' Appendix (Pet. App. pp. 76-77).

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*Respondents' Appendix, attached hereto, will be symbolized by "Resp. App.", the Petition by "Pet." and Petitioners' (separate) Appendix by "Pet. App." All emphasis in quoted material is added by counsel.

The June 26, 1970 "Memorandum Opinion [of the District Court] Approving Desegregation Plan for Dade County Public Schools with Modifications and Final Judgment" is not reported and appears in Petitioners' Appendix (Pet. App. pp. 20-51).

The July 24, 1970 "Supplemental Order [of the District Court] Approving Desegregation Plan for Dade County Public Schools, as Modified, and Amended Final Judgment" is not reported and appears in Petitioners' Appendix (Pet. App. pp. 51-75).

The August 12, 1970 Mandate and opinion of the Court of Appeals (to which the Petition filed herein is directed) is not reported and appears in Petitioners' Appendix (Pet. App. pp. 3-20).

QUESTIONS PRESENTED

The Petition sets forth three "Questions Presented" at p. 2,[1] the first of which contains a fallacious interpretation of the opinion below, the second of which contains an erroneous assumption of fact, and the third of which poses an irrelevant question of law.

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[1] "Questions Presented" as stated in Petition at p. 2:

"1. Whether, as a constitutional matter, any particular degree of racial balance must be achieved in the schools.

"2. Whether the Circuit Court of Appeals may, summarily and without benefit of the complete record, substitute its judgment for that of the District Court.

"3. Whether Congress has the power to define acts which comply with the 14th Amendment and whether such definitions are binding upon this Court."

Respondent therefore restates the "Questions Presented" in the Petition as follows:

1. Did the Court of Appeals below commit reversible error in holding that the Dade County Public School System had not been converted from a dual to a single unitary school system with respect to students?

   (Respondents answer "No")

2. Did the Court of Appeals below improperly apply existing law in the case at bar?

   (Respondents answer "No")

3. Does the Civil Rights Act of 1964 Prevent Federal Courts From Ordering the Disestablishment of Dual Public School Systems?

   (Respondents answer "No")

STATEMENT

Despite petitioners' constant and numerous protestations in this Court and in the courts below to the effect that "The Dade County School Board recognizes its affirmative responsibility to provide a desegregated, unitary and non-racial school board system . . . " (see e.g. Pet. p. 4, Pet. App. p. 80), the fact is that the School Board has failed to meet such responsibility in the fourteen years following *Brown v. Board of Education*, 1954, 347 U.S. 483 and continues to evade such responsibility *except in response to the threat of withdrawal of federal funds or in response to a direct unambiguous court order.*

In its August 29, 1969 opinion (Resp. App. p. A 1), the district court below noted that a Florida lawsuit to "effect the integration of the Dade County schools" was filed shortly after the *Brown* decisions[2] and that in 1960 Judge Lieb provided therein for a freedom of choice plan with jurisdiction retained while the plan was put into effect; nevertheless, at "the close of the 1968-1969 school year there were 42 all negro schools in the system out of a total of 217 schools" (Resp. App. pp. A 1-2).

Two days prior, on August 27, 1969 the district court had assumed jurisdiction of the within *Pate* case *inter alia* upon the School Board's petition for removal in order to avoid the "voiding of an interim plan providing for more integration" (the original plaintiffs sued in state court to block the closing of an all-Black High School under the School Board's "revised interim plan for the 1969-1970 school year," *a plan necessitated by the expressed judgment of the Department of Health, Education and Welfare that the Dade County school system was not in substantial compliance with Title VI of the 1965 Civil Rights Act and the consequent threat of the loss of federal funds*) (Resp. App. pp. A 2-4).[3]

The district court held the School Board's "interim plan" *unconstitutional* under *Green v. County School Board*

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[2]*Gibson v. Board of Instruction of Dade County, Florida*, S.D. Fla. 1958, 170 F.Supp. 454, rev'd 5th Cir. 1959, 272 F.2d 763 and see also 5th Cir. 1957, 246 F.2d 913, now consolidated with the within *Pate* case before the district court below (Resp. App. p. A 4).

[3]The district court consolidated with *Pate* the *Pardo* case removed to said court and the *Frank* case filed in district court, both involving attacks on the plan, and granted petitions to intervene by various individuals and organizations including Respondents herein (Resp. App. p. A 4). Subsequent grantings of petitions to intervene resulted in more than twenty parties in the district court of whom the overwhelming majority *opposed* desegregation.

of New Kent County, 1968, 391 U.S. 430, *inter alia* (Resp. App. p. A 5). The district court also held immediate pupil desegregation "not feasible" because it would result in "chaos" when "the 7th largest school system in the United States is due to open" eighty-four hours later (Resp. App. pp. A 5-6). The district court therefore "adopted and approved" the *unconstitutional* Board plan, ordered the School Board to submit (within 30 days, i.e., by September 28, 1969) an "administrative feasibility" study concerning "total disestablishment of a dual school system at the elementary and junior high levels at the beginning of the second semester of the 1969-1970 school year" (i.e., as of January, 1970) and to further submit to the court "by March 1, 1970 a plan to eliminate the dual school structure in grades 10-12 by no later than September 1, 1970" (Resp. App. pp. A 6-7).

Three and one half days after the district court's August 29, 1969 opinion discussed above, the Dade County 1969-1970 school year began . . . once again with an unconstitutional dual school system. During the school year, in respondents' opinion, the School Board diligently and assiduously attempted to forestall both faculty and student desegregation by delaying submission of the studies ordered, failing to evolve any meaningful plan, etc.

The School Board was not successful with respect to faculty desegregation. Pursuant to *this* Court's decision in *Alexander v. Holmes*, Oct. 29, 1969, 396 U.S. 19 and the Court of Appeals for the Fifth Circuit's decision in *Singleton v. Jackson Municipal Separate School District*, 5th Cir. Dec. 1, 1969, 419 F.2d 1211, the district court on December 10, 1969 ordered *complete faculty* desegregation by *February 1*, 1970. The court, however, did not order complete student desegregation until September 1, 1970 (Resp.

App. pp. A 8-9, see also further Order dated January 8, 1970, Resp. App. p. A 14).

Although the School Board had vigorously contested the possibility and/or practicality of total teacher desegregation by February 1, the School Board managed to achieve such result *once the date was firmly set by order of the district court.*

The district court in effect partially anticipated the December 12, 1969 decision of the court of appeals in *Frank v. Braddock*, 5th Cir. 1969, 420 F.2d 690, an appeal in a case *consolidated* with this case at bar, wherein the appellate court *reversed* the August 29, 1969 order of the district court on the ground that the *Alexander v. Holmes* and *Singleton v. Jackson* cases, *supra*, required that school district must "begin *immediately* to operate as *unitary* school systems" and "*unitary* operation [must occur] pending litigation" (420 F.2d at p. 691).[4]

The School Board's dilatory tactics were more successful with regard to pupil desegregation, at least until the August 1970 Order and Opinion of the court of appeals challenged herein finally required some degree of student desegregation in Dade County.[5]

---

[4]Appellant Frank objected to desegration of a particular school under the School Board's "Interim Plan" approved by the district court's August 29, 1969 Order and in no way supported respondents' efforts for greater desegregation in less time. Nevertheless, the *Frank* appeal brought before the appellate the August 29, 1969 district court's Order.

[5]No doubt the School Board would have liked to postpone any final judgment until 84 hours before the opening of the present 1970-1971 school year so that another plea of "chaos" could have been made, thus yielding the possibility of another school year under a dual system declared unconstitutional by the district court below one year prior.

On January 15, 1970 respondents filed a "Motion to Amend Order" of the district court of December 10, 1969 and "to require the Dade County School Board to effectuate a *unitary* school system by February 1, 1970" (Resp. App. p. A 16). Respondents' "Memorandum In Support of Motion to Amend Order and Accelerate Pupil Desegregation" relied on this Court's opinion in *Carter v. West Feliciana Parish School Board*, January 14, 1970, 396 U.S. 290, to support their contention that "Dade's Board of Public Instruction cannot continue its pattern of perfunctory verbalization against racial discrimination while actually accepting or abetting it" (Resp. App. pp. A 17, 20).

On January 26, 1970 the district court entered its "Order Approving Teacher Integration Plan and *Denying Motion by Intervenors For Immediate Pupil Integration*" and stated as follows (Resp. App. p. A 20, at pp. A 22-23):

> "Also before the Court at this time is a motion by intervenors Alice Love, Carswell Washington and Martha Washington for *immediate pupil desegregation* in the Dade County School System. Joining as Amicus is the American Civil Liberties Union [of Florida] . . .
>
> "It is my decision that ordering total pupil desegregation by February 1, March 1, or any time prior to the opening of school in September of 1970 is *not physically possible* . . . [since] the only pupil desegregation plan which is available for implementation is that which is to be filed by the School Board on February 1 . . . [which] in addition to being geared to September 1, 1970 implementation, provides that 21 schools in Dade

> County will have all-black student bodies . . . [and] *I do not find that such plan would meet the constitutional standard of a unitary school system* . . . I find that disruption and chaos . . . should not be visited upon the Dade schools merely to implement an interim plan . . . "It is further ordered that the Dade County School Board shall submit a plan to this Court by April 1 which provides for the operation of a unitary school system by September, 1970 . . . "

In other words, the district court denied respondents' motion for immediate pupil desegregation *because the School Board had not submitted a constitutional plan for student desegregation as of January 26, 1970, wher more than half of the 1969-1970 school year had passed!*

On January 26, 1970 respondents appealed to the Court of Appeals for the Fifth Circuit from the district court's Order denying pupil desegregation prior to September 1, 1970 (Resp. App. p. A 25)[6] and the School Board cross-appealed "to that portion of the order holding that a district in which there would remain twenty-one all-black student bodies would not meet the constitutional requirements of a unitary school system" (Petitioner-School Board's Brief to the Court of Appeals dated February, 1970, p. 6).

Respondents' Brief to the Court of Appeals, dated February 23, 1970 took the position that under *this* Court's October 29, 1969 *Alexander v. Holmes* decision, *supra*,

---

[6]On July 15, 1970 respondents filed an Amendment to Notice of Appeal adding the district court's June 26, 1970 Order and asserting that "the opinion and order appealed from is unconstitutional in that it fails to provide for a single unitary school system in Dade County, Florida" (Resp. App. p. A 26).

"the time for every school district to terminate dual school systems was *at once*," that the *Alexander* and *Carter v. West Feliciana* cases, *supra*, required that "both faculty *and pupils must be desegregated* on or before February 1, 1970" (p. 3) and stated as follows (at pp. 4 and 5):

> "To permit school boards to delay indefinitely the establishment of a unitary system because of their failure or unwillingness to adopt a Constitutional plan, is to reward them for their failure to take the affirmative action imposed upon them by law . . .
>
> (p. 4)

> "The Dade County School Board has, for the past 15 years, operated an unlawful and unconstitutional dual school system. In doing so they have, until recently, utilized the very means they now deplore to insure the success of its operation, that is, they have cross-bused white children past black schools. The board, as I see them, are before the Court with 'filthy hands' soliciting this Court's aid and approval to continue a course of unlawful conduct . . .
>
> (p. 5)

> " . . . the district court should have granted appellants' motion, and ordered the Dade County School Board to take whatever steps might be necessary, be it busing, boating or bobsledding, to convert to a unitary system in which racial discrimination would be eliminated root and branch, no black schools and no white schools, just schools and to do it now, February 1, 1970."
>
> (p. 7)

Respondents' Prayer for Relief in their Brief to the circuit court below including the following:

> "(1) A reversal of the district court's order with directions that pupils be integrated immediately.
>
> "(2) That said pupils be integrated, on more than a token basis, in a unitary system where no black schools or white schools remain.
>
> "(3) That the Dade County School Board be directed in unambiguous and no uncertain terms, to use whatever means, and take whatever steps necessary to accomplish and immediately convert to a unitary system."[7]
>
> (p. 8)

On June 5, 1970 the court of appeals entered its order remanding all appeals and cross-appeals in the case at bar (including those of respondents and petitioners herein) to the district court pending the lower court's approval of any new orders or plans based on additional

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[7]Respondents' Brief to the court of appeals was accompanied by a 35 page Appendix. Petitioner's Brief to said court, as appellees and cross-appellants, was 31 pages long. Said petitioner's Directions to the Clerk designated "All papers filed or *hereafter filed* in this cause including the transcripts of all hearings and exhibits . . ." The district court's Order and opinion of January 26, 1970 explicitly called "the attention of the parties" to the *Singleton* expedited appeal rules (Resp. App. p. A 27) A.C.L.U. of Florida attorneys assisted respondents' counsel in the praparation of the Brief to the circuit court of appeals, at respondents' request, said organization, as *amicus curiae*, having been the *only* party supporting respondents' Motion to accelerate pupil desegregation before the district court with more than 20 other parties opposing said Motion. A.C.L.U. of Florida attorneys now represent respondents as direct co-counsel in *this* Court, at respondents' request, along with Mr. Matthews who has represented respondents from the inception of their case.

hearings on May 22. The court of appeals ordered that "any new plans, together with any Findings and Conclusions of Law thereon, shall be filed with this court within 20 days from the date hereof" and *retained* jurisdiction of the appeals during "the *limited remand.*" (Pet. App. pp. 76-77).

The June 26, 1970 and July 24, 1970 Opinions of the district court "Approving Desegregation Plan for Dade County Public Schools . . ." with Final Judgment and Amended Final Judgment (Pet. App. pp. 20-51 and 51-75) were sent to the court of appeals, as required by the appellate court's June 5, 1970 "limited remand" order, and culminated in the August 12, 1970 Mandate of the court of appeals reversing the district court's decisions (in part) with respect to student desegregation (Pet. App. pp. 3-20). This decision and opinion of the court of appeals, which petitioners seek to have reviewed by this Court, held that the Dade County School system had been converted from a dual to a unitary school system by the district court's decision below with respect to faculty, staff, transportation, facilities, and extra-curricular activities . . . *but not with respect to student assignment.* The court of appeals stated as follows:

> ". . . the board's [March 31, 1970 final desegregation] plan leaves 36 schools all — or virtually all-Negro, housing 37,672 Negro students or 64% of the Negro student population. The modifications contained in both the district court's opinions [of June 26, and July 24, 1970] reduce these figures substantially, but still leave 22 schools all — or virtually all-Negro, housing 25,595 or 44% of the Negro student population . . . we find

that many of the reasons given for not achieving a greater degree of desegregation and the final results accomplished are unacceptable. . .

(Pet. App. p. 7)

"The following modifications reduce the number of Negro students attending all — or virtually all-Negro schools from 44% to 24% of the entire Negro student population. Implementation of these modifications effectively desegregate the Dade County School system. However, the district court is not precluded hereby from approving any plan which will achieve substantially the same results as achieved by our modifications or an even greater degree of desegregation. Such a plan must, of course, be approved by the district court and must be implemented as of the beginning of the 1970-1971 school year. If no such plan is submitted, the district court is directed to implement the following modifications . . .

(Pet. App. p. 9)

"It is not intended by this opinion that the district court be deprived of its discretion to adjust our modifications and any subsequently submitted by the board. Its discretion is limited, however, to the extent that no adjustments may diminish the degree of desegration required by this court. Of course, the school board and the district court are under a continuing duty to appraise the system in the light of actual conditions and experience and within the limits we have just indicated, make whatever changes are required to assure the maintenance of a unitary system."

(Pet. App. pp. 19-20)

On August 20, 1970 petitioners applied to the Honorable Justice Black of this Court requesting "that a stay of the Fifth Circuit's mandate be granted *for the current [1970-1971] school year, or* in the alternative, that a stay be granted *until final disposition of the petition for the writ of certiorari.*" Once again petitioners asserted that compliance with the disestablishment order of the court below was "*not possible.*"

When petitioners' application for a stay was denied, the School Board managed to effectuate the pupil desegregation plan set forth by the appellate court (with minor modifications by the district court in accordance with the court of appeals' opinion) during the present 1970-1971 school year.

Thus the Dade County public school system *finally* has some degree of student desegregation today, *fourteen years* after this Court's initial decision in *Brown v. Board of Education, supra.*[8]

ARGUMENT

REASONS FOR DENYING THE WRIT

I.

The Court of Appeals Did not Commit Reversible Error in Holding that the Dade County Public School System Had Not Been Converted From A Dual To A Single Unitary System With Respect To Students

[8]Respondents' time for filing this Brief in Opposition was extended to and including December 20, 1970 (see letter from the Clerk of this Court dated November 18, 1970).

Petitioners state Reason 1. as "Constitutional Obligation to Correct Imbalance . . . Whether, as a Constitutional Matter, Any Particular Degree of Racial Balance Must Be Achieved in Schools" (Pet. p. 11).

The simple fact of the matter is that neither the district court nor the court of appeals below held that any particular degree of racial balance must be achieved. Indeed, respondents herein (intervenors in the district court and intervenors-appellants-cross-appellees in the court of appeals) merely sought *disestablishment of Dade County's dual school system* without suggesting any specific plan or ratio or degree of racial balance. Opposed by approximately twenty attorneys and parties of record seeking *less* and/or *later* desegregation rather than more and sooner (including not only the Dade County School Board but also the Hon. Claude R. Kirk, Jr., Governor of Florida, the Hon. Earl Faircloth, Attorney General of Florida, and the Hon. William C. Cramer, U. S. House of Representatives), respondents counsel did not attempt to assume the duty to desegregate imposed by this Court on the School Board under *Green v. School Board of New Kent County*, 1968, 391 U.S. 430.

Only the American Civil Liberties Union of Florida, as *amicus curiae*, requested the district court (and did so formally by Memorandum of Law) to reject *all* plans before it and to seek or formulate a plan including cross-busing, if necessary, whereby *every* public school in Dade County would have a ratio of black and white students not deviating more than 10% either way from the ratio of 23% Black/77% White students throughout the system (i.e., no school would begin the 1970-1971 year with less than 13% Black students or more than 33% Black students, or less than 67% White students or more than 87% White students).

The district court explicitly rejected such position in its June 26, 1970 "Memorandum Opinion" (Pet. App. p. 23):

> "The American Civil Liberties Union proposes that the Court require a fixed ratio in every school in the County. The law does not require such drastic action to achieve a unitary system."

The court of appeals not only denied A.C.L.U.'s motion for leave to file a brief as amicus curiae (a motion accompanied by a copy of the brief desired to be filed, such brief containing the same position as taken in the district court) but also rejected A.C.L.U.'s position in no uncertain manner, i.e., the appellate court *retained* "all — or virtually all-Negro schools . . . [serving] 24% of the entire Negro student population" and even retained one *all-Black Senior High School* (Pet. App. pp. 9, 19).[9]

Petitioners' assertion that the court below imposed a "particular degree of racial balance" as a requirement for disestablishment of Dade County's dual school system is inexplicable to respondents.

About the only statement in Petitioners' argument on this "Reason" (Pet. pp. 11-18) with which respondents are in agreement is that "It is time that the *de facto-de jure* myth be laid to rest by this Court," a statement totally

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[9]Obviously A.C.L.U. of Florida, acting only as *amicus curiae* in the district court, (prior to its attorneys becoming direct co-counsel for respondents at respondents' request *after* the School Board's Petition for a writ of certiorari was filed in *this* Court), was in no position to appeal from the district court's orders and opinions to the court of appeals or to seek cross-certiorari to the court of appeals in *this* Court.

irrelevant in the case at bar as even petitioners concede that "in most southern states, including Florida, there have been laws requiring separate educational facilities for black and white, miscegenation laws and certain discriminatory public facilities laws . . ." (Pet. p. 14).[10]

Petitioners decry the appellate court's "fascination with the prospect of reducing the number of black students in all-black schools or virtually — all-black schools . . ." (Petition p. 8), deem the court of appeals improperly "engrossed with statistics" (Pet. p. 9), and fear that "the federal judiciary will engage in a gigantic numbers game, the result of which none can predict" (Pet. p. 18). But petitioners' *own* statistics reveal the incredible numbers game Dade County has been playing. *The March 31, 1970 Dade County School Board's Desegregation Plan* (Pet. App. pp. 80-87, see p. *82*) contemplated *250,000* public school students in September, 1970 (60,000 Black and 190,000 White) of whom *97,500* (24,000 Black and 73,500 White) would *not* be in "bi-racial or integrated situations," *with the School Board defining "bi-racial" or "integrated" schools as less than 95% Black and less than 95% White.* Under the School Board's "definition", about 70% of the schools would be "desegregated" as of September 1970 when:

> "There will remain 21 schools which will be all black, or more than 95% black. There will be approximately 51 schools which will be all white,

[10]Of course respondents' agreement is clearly based on a reason differing greatly from petitioners. In respondents' opinion, the historical facts concerning slavery, the badges of slavery and the effects of racial discrimination in our country have permeated the entire United States to the point where "de facto" segregation is an inherently inaccurate term or concept with respect to Black and White Americans.

> or in excess of 95% white; and there will be 147 regular schools which will be desegregated. In addition, there will be 8 special schools . . ."
> (Pet. App. p. 82)

It was obvious to respondents, it was obvious to the district court, and it was obvious to the court of appeals below that (1) *many more than half* of the Dade County public school students would be attending segregated schools as in the 1970-1971 school year if *any reasonable* definition of a segregated school be used; (2) the School Board's plan to "desegregate" "70%" of the schools was *no such plan* and was much too little, much too late under this Court's *Alexander v. Holmes* and *Carter v. West Feliciana* decisions[14]; and (3) Dade County would *not* be converted from a dual to a unitary school system for the present 1970-1971 school year *unless the courts assumed the responsibility* for upholding the Fourteenth Amendment and *this* Court's *Brown v. Board of Education* decisions and subsequent decisions relating thereto.

According to the Petition, Dade County is "a county which had commenced its efforts in desegregation as early as 1959, which had at the commencement of the 1968-1969 school year 134 integrated schools [under the School Board's unbelievable 95% definition of "integrated"?], *a community which has led the state and the south in its efforts to desegregate schools*" (Pet. p. 18).

If such statement be true, how sad it is; so much effort, so little accomplishment.

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[14] *Alexander v. Holmes County Board of Education*, 1969, 396 U.S. 19; *Carter v. West Feliciana Parish School Board*, 1970, 396 U.S. 290.

Respondents respectfully submit that since the Dade County School Board was unable or unwilling to disestablish the dual public school system for the 1970-1971 school year, the court of appeals below did not commit reversible error in recognizing such failure to convert to a unitary system and in correcting (to some extent at least) the unconstitutional situation existing at this late date.

II.

THE COURT OF APPEALS BELOW DID NOT IMPROPERLY APPLY EXISTING LAW

Petitioners' contention that the court of appeals has summarily "substituted its judgment" for that of the district court is without merit. Equally inaccurate is petitioners' assertion that respondents' appeal to the court of appeals and petitioners' cross-appeal were rendered "moot" in the case at bar.

Petitioners state that the "thrust of Love's appeal was that the pupil desegregation portion of the plan should be implemented immediately" (Petition p. 19). *The thrust of respondents' January* 1970 *appeal was that pupil desegregation should be ordered by the court and also be ordered immediately,* relief granted at least in part by the court of appeals' August 12, 1970 opinion below (Pet. App. p. 3). Respondents have never approved and do not today approve *any* of the alleged pupil desegregation plans offered by the School Board.

Respondents did duly prosecute their appeal to the circuit court,[12] (see "Statement," *supra*).

It should also be noted that petitioner-School Board filed a brief, appendix and transcript in the court of appeals as appellees and cross-appellants; moreover, such petitioners' February 3, 1970 "Directions to the Clerk" designated for transmission to the court of appeals "*All* papers filed *or hereafter filed in this cause, including the transcripts of all hearings and exhibits,* but excluding all notices of hearings, subpoenas, returns of service and summonses." Briefs were also filed in the court of appeals by amicus William C. Cramer, Intervenor-Dade County Classroom Teachers' Association, Inc. and Intervenor-Cross-Appellant-Governor Kirk (as well as by other parties in related appeals).[13]

The court of appeals gave *all due deference* not only to the district court below but also to petitioner-School Board by attempting to permit the school board and/or court below to formulate a constitutional disestablishment plan for the 1970-1971 school year (Pet. App. pp. 3-20). The School Board's *last* plan was blatantly insufficient (as revealed not only by testimony taken in the various hear-

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[12]See district court's order of January 26, 1970 (Resp. App. p. A 27) calling "the attention of the parties" to the court of appeals' *Singleton* language concerning expedition of school desegregation appeals, 419 F.2d at 1222; see also *Frank v. Braddock*, 5th Cir. 1969, 420 F.2d at 691 (fn. 1), relying on *this* Court's opinion in *Alexander v. Holmes, supra.*

[13]The court of appeals had more than sufficient information before it. Indeed, the district court's June 26 and July 24, 1970 Opinion and Orders (transmitted to the appellate court under *its* Order of limited remand on June 5, 1970) alone sufficed. In addition, the appellate court had before it appeals from other parties in the consolidated cases with *Pate*, see e.g., *Frank v. Braddock*, 5th Cir. 1969, 420 F.2d 690.

ings but also by the district court's June 26 and July 24, 1970 Memorandum Opinion and Supplemental Order, respectively, Pet. App. pp. 20-21 and 51-75). The district court's "great diligence" was duly noted but "the final results accomplished . . . [were] unacceptable." The court of appeals therefore reluctantly but dutifully and properly applied existing law to the facts in the case at bar. The court of appeal's August 12, 1970 opinion clearly demonstrates the due deference alluded to by respondents (see e.g. Pet. App. pp. 7 and 19-20).

The court of appeals, relying on this Court's decisions in *Brown v. Board of Education*, 1954, 347 U.S. 483, 1955, 349 U.S. 294, *Green v. County School Board of New Kent County*, 1968, 391 U.S. 430, and *Alexander v. Holmes County Board of Education*, 1969, 396 U.S. 19, *inter alia* (Pet. App. pp. 4, 8) found "many of the reasons given for not achieving a greater degree of desegregation and the final results accomplished . . . unacceptable" (Pet. App. 7). Having "studied the maps, the various plans, and thorough opinions" and having found the "purported obstacles to pairing, grouping or rezoning . . . including traffic hazards, school capacities, individual school programs, format and curricula, walking distances, natural barriers and grade levels in each school . . . [as well as] the recurring problem of the Spanish-speaking students in the school system"[14] *not* " ' of overriding importance . . .

[14]The "problem" of the Cuban American public school students appears to be the fact that they do not wish to speak Spanish as well and as often as their parents wish unless compelled to do so by the schools. Such students rapidly learn English in the community as well as in the schools (and particularly in *non*-bilingual schools) and then wish to communicate with non-Cuban Americans in English. See "A Process Description and Evaluation of the Programs for Bilingual Education Within Three Bilingual Elementary Schools in the Dade

(continued next page)

[with respect to] effective promotion of desegregation'" (Pet. App. pp. 7, 8), the court below had no choice but to apply existing law as it did.[15]

The School Board's desire for further delay until the 1971-1972 school year (or perhaps the 2071-2072 school year) and the School Board's desire to retain a dual school system as far as one of the six criteria is concerned (namely, pupil desegregation, see Pet. App. pp. 4-7 and Petition p. 13), intense as such desires may be, should not and did not prevent the appellate court below from securing to public school children a generation fourteen years removed from those who were plaintiffs in *Brown v. Board of Education, supra,* equal protection of the laws under the Fourteenth Amendment.

County Public Schools, Florida" by Von N. Beebe, May 15, 1970 (95 pp. independent study and conclusions commissioned by the Dade County Public School System and presently being reviewed and revised thereby, and see especially pp. 65, 71, 91, 25). *If* voluntary or compulsory "bilingual-bicultural" public schools are to be established in Dade County to teach the Spanish language and Cuban culture in equal degree as English and traditional American course curricula (see e.g. op. cit. pp. 6, 7, 54, 88), then Black public school students must have equal opportunity with White public school students to receive the benefits and/or disadvantages thereof. *If* so-called "bilingual-bicultural" public school education is Constitutional and advisable (a hypothesis neither accepted nor rejected by respondents at this time but one which presents serious Constitutional questions since it may require *segregation* of Cuban Americans and non-Cuban Americans, see op. cit. pp. 14-18, 28, 56, 77, 88-90), *then public school desegregation of Blacks and Whites must be incorporated therein or placed first* (contrary to current practice in Dade County, op. cit. pp. 14, 24, 36, 39, 43, 45, 54, 63-65, 67, 89).

[15]*Northcross v. Board of Education of the Memphis, Tennessee, City Schools,* 1970, 397 U. S. 232, petitioners' chief authority (Pet. p. 25) is not relevant because the appellate court in the case at bar determined that the district court's Order was insufficient *as a matter of law,* under the "evidence" set forth in the district court's opinion.

III.

THE CIVIL RIGHTS ACT OF 1964 DOES NOT PREVENT FEDERAL COURTS FROM ORDERING THE DISESTABLISHMENT OF DUAL PUBLIC SCHOOL SYSTEMS

The Civil Rights Act of 1964, 42 U.S.C. sec 2000c and Sec. 2000c(6), does *not* prevent federal courts from requiring disestablishment of dual public school systems under the Fourteenth Amendment.

Petitioners' position to the contrary is grounded on the erroneous conclusion that the Congressional statute limited or sought to limit the jurisdiction and equitable powers of the federal courts existing prior to, at the time of and subsequent to the passage of such statute. The statute "did not enlarge the court's existing powers to ensure compliance with constitutional standards . . . neither did it reduce [them]," *United States v. Jefferson County, Board of Education*, 5th Cir. 1966, 372 F.2d 836, 886.

It is clear that federal courts retain jurisdiction and power to order the elimination of public school segregation and the establishment of a unitary public school system by whatever means necessary, including cross-busing, so that equal protection of the laws under the Fourteenth Amendment may be reality rather than a dream. Cross-busing, when required or appropriate to "eliminate unconstitutional school segregation . . . is not done to achieve racial balance, although that may be a result, but to counteract the legacy left by the Board's history of discrimination," *United States v. District 151 of Cook County, Illinois*, 7th Cir. 1968, 404 F.2d 1125 at p. 1130.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES W. MATTHEWS
5022 N. W. 7th Avenue
Miami, Florida

IRMA ROBBINS FEDER and
RICHARD YALE FEDER
c/o A.C.L.U. of Florida
11th Floor, Roberts Building
28 West Flagler Street
Miami, Florida 33130

ALFRED I. HOPKINS
c/o A.C.L.U. of Florida
1701 Meridian Avenue
Miami Beach, Florida 33139

MAURICE ROSEN
c/o A.C.L.U. of Florida
16924 N. E. 19th Avenue
North Miami Beach, Florida

Attorneys for Respondents

CERTIFICATE OF SERVICE

I, JAMES W. MATTHEWS, Counsel for Respondents, Alice Love, et al., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17 day of December, 1970, I served three copies of the foregoing Brief of Respondent Alice Love et al. in Opposition to Petition for a Writ of Certiorari by mailing the same duly addressed to the following list of attorneys of record in this cause:

GEORGE C. BOLLES, ESQ.
Bolles, Goodwin, Ryskamp & Ware
401 City National Bank Building
Miami, Florida 33130

HON. CLAUDE R. KIRK, JR.
Governor of Florida
The Capitol
Tallahassee, Florida 32304

WILLIAM A. FRIEDER, ESQ.
8851 S. W. 82nd Avenue
Miami, Florida 33156

HON. EARL FAIRCLOTH
Attorney General of Florida
The Capitol
Tallahassee, Florida 32304

THOMAS H. ANDERSON, ESQ.
Shutts & Bowen
1000 First National Bank Building
Miami, Florida 33131

JAMES E. GLASS, ESQ.
Ainsley Building
Miami, Florida 33132

BUFORD RIVERS, ESQ.
General Counsel
State Board of Education
Tallahassee, Florida 32304

HILERY F. SILVERMAN, ESQ.
1406 Biscayne Building
Miami, Florida

LARRY S. STEWART, ESQ.
Frates, Fay, Floyd & Pearson
Concord Building
Miami, Florida

HOWELL L. FERGUSON, ESQ.
Legal Services Program, Inc.
3600 Grand Avenue
Miami, Florida 33133

DANIEL NEAL HELLER, ESQ.
1205 Ainsley Building
Miami, Florida 33132

TOBIAS SIMON, ESQ.
223 S. E. First Street
Miami, Florida 33131

Certificate of Service continued on next page.

CERTIFICATE OF SERVICE (cont.)

LANE & MITCHELL
902 Roberts Building
28 West Flagler Street
Miami, Florida 33130

WILLIAM M. MANKER, ESQ.
Manker & White
1004 Northeast Airlines Building
Miami, Florida 33132

WILLIAM L. GRAY, III, ESQ.
Blackwell, Walker & Gray
100 N. E. First Avenue
Miami, Florida 33130

J. E. LUDICK, ESQ.
Ludick, Hunt & Hamilton
12595 N. E. Seventh Avenue
Miami, Florida 33161

ROBERT R. FRANK, ESQ.
Frank, Stralkow & Marx
1335 Lincoln Road
Miami Beach, Florida 33139

HENRY A. EDGAR, JR., ESQ.
Ward & Ward
1240 DuPont Building
Miami, Florida 33131

WICKER, SMITH, PYSZKA,
BLOMQVIST & DAVANT
Biscayne Building
Miami, Florida 33130

AARON A. FOOSANER, ESQ.
Foosaner, Barest & Hamilton
Roberts Building, Penthouse 1
Miami, Florida 33130

PAUL B. STEINBERG, ESQ.
350 Lincoln Road
Miami Beach, Florida 33139

MR. ALAN H. ROSENSON
4090 Battersea Road
Coconut Grove, Florida 33133

HON. WILLIAM C. CRAMER
U. S. House of Representatives
2370 Rayburn Office Building
Washington, D. C. 20025

JAMES W. MATTHEWS
5022 N. W. 7th Avenue
Miami, Florida

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1020-Civ-CA

August 29, 1969

ORDER APPROVING INTERIM DESEGREGATION PLAN FOR DADE COUNTY PUBLIC SCHOOLS

In 1956, following the landmark school integration cases of *Brown v. Board of Education*, 347 U.S. 483 (1954) and 349 U.S. 294 (1955), a lawsuit was filed in the United States District Court in the Southern District of Florida. The case was styled *Gibson v. Dade County School Board* and sought to effect the integration of the Dade County schools. On March 17, 1960 United States District Judge Joseph P. Lieb entered an order providing for the implementation of a freedom of choice plan in the schools. This order also stated

> "It is further ORDERED, ADJUDGED AND DECREED that the Court retains jurisdiction of this cause for such time as may be necessary to put the plan herein provided into operation and for determination as to whether further proceedings are necessary."

From the time of the entry of this order to the present this case has lain dormant. In the interim the integration of the Dade County School System has proceeded at a moderate rate. At the close of the 1968-69 school year

there were 42 all negro schools in the system out of a total of 217 schools. On July 1, 1969 the Department of Health, Education & Welfare, charged by Congress in Title 42 U.S.C. §2000 with administering federal funds to aid public education and to assist in the process of desegregating public schools, notified the Dade County School System that it was not in substantial compliance with Title VI of the 1954 Civil Rights Act which concerns desegregation. At the time of the notification HEW stated:

> "It is expected that the Dade School System will develop and implement a plan which will eliminate the duel school structure in the system by no later than September 1970 and that those steps toward that end which are administratively feasible will be taken by September 1969."

In accordance with this direction the school board obtained the services of the Florida School Desegregation Consulting Center, a federally funded center at the University of Miami. The Center studied the Dade System for approximately one month and on July 23, 1969 submitted an Interim Desegregation Plan for the 1969-70 school year. The School Board approved this plan on July 25 with two changes. They rejected the recommendation that there be pairing of two groups of elementary schools in South Dade County and they eliminated the all black Mays Junior-Senior High School. The revised interim plan was approved by HEW on August 4 pending receipt of a final plan by February 1, 1970.

At this point the school system began making preparations to operate under the revised interim plan for the

1969-70 school year. Certain portions of the plan met with public opposition as did certain steps taken to implement the plan. This opposition culminated in the filing of several lawsuits in the Eleventh Judicial Circuit of the State of Florida. The various plaintiffs were the parents of school children in the Dade System and the defend nts were uniformly the Dade County School Board. The first of these suits attacked the Board's action with regard to the elimination of the all black Mays school. It is styled *Pate v. Dade County School Board.* The Board's action was alleged to be arbitrary and capricious and also as taken in violation of Florida Statute 286.011, known as the "government in the sunshine law." This law requires that any official action taken by an agency of the State of Florida be taken in public proceedings and that a written record of such proceedings be made. The School Board petitioned this Court for removal of the Pate case on August 25, 1969, alleging that the case was one of exclusive federal jurisdiction. At 8:30 a.m. on August 27, the court heard a motion to remand and under the doctrine of *England v. Louisiana State Board of Medical Examiners,* 375 U.S. 411 (1963) remitted the case to the State Court for determination of state law issues and retained jurisdiction of the case for determination of any federal questions. At 9:00 p.m. on August 27, Circuit Judge David Popper entered a temporary injunction restraining the School Board from implementing its plan of July 25 as it related to Mays School. The basis of the injunction was Judge Popper's finding that the "government in the sunshine law" had been violated and that the action of the school Board in regard to Mays was void. The effect of this ruling was to require Mays to open as an all black school for the school year 1969-70.

At 3:30 p.m. on August 27, the Court considered the request of the School Board that the Court exercise jurisdiction in the Pate case. Based on the effect of the State Court's ruling, which negated the immediate elimination of an all black school, this Court accepted jurisdiction. Other factors which dictated the exercise of jurisdiction were the issuance of another injunction negating a separate portion of the Board plan and the fact that eventually under the State Court ruling, all action taken by the Board on July 25, when the plan was approved, would be held void as being in violation of the sunshine law. The State Court injunctions, of course, ran only in favor of the particular plaintiffs before that court. The foreseeable result was that after sufficient plaintiffs came before the State Court the entire plan would be voided. The voiding of an interim plan providing for more integration is unquestionably a question for the Federal Courts. Finally, reiterating the last order in Gibson — This Court retained jurisdiction over the Dade County School System for the purposes of supervising its desegregation.[1]

The case of *Pardo v. Dade County School Board* has been removed from the State Court to this Court. The case of *Frank v. Dade County School Board* has been filed in this Court. Both of these cases concern attacks on aspects of the interim plan and it is ORDERED that they be consolidated with the *Pate* case in accordance with oral rulings made this morning. It is further ordered that petitions to intervene on the side of the plaintiffs filed by *Webb, et al., Rosen, et al., Wolff, et al., Eagle, et al,* and

[1]By virtue of the order of the Acting Chief Judge of the Southern District of Florida, William O. Mehrtens, the case of *Gibson v. Board of Public Instruction of Dade County, Florida* is transferred to this division and consolidated with the case of *Pate v. Dade County School Board* presently in this division.

Reiter, et al., as parents of children attending Dade public schools are all granted. IT IS FURTHER ORDERED that petitions to intervene on the side of the defendants filed by the *Dade County Classroom Teachers Association* and *Love, et al.*, are granted.

At this point, after two days of testimony and argument, eighty-four hours before the seventh largest school system in the United States is due to open, this Court must approve a desegregation plan under which this system is to be operated for the 1969-70 school year. This plan must be formulated in accordance with the Constitutional standards delineated by the Supreme Court and the Fifth Circuit Court of Appeals. In devising such a plan the Court is confronted with a dilemma. It is clear from *Green v. County School Board of New Kent County, Virginia*, 391 U. S. 430 (1968), the most recent *United States of America v. Jefferson County Board of Education, et al.*, ____ F.2d ____, (No. 27444, June 26, 1969, 5th Cir.) decision, and numerous other Fifth Circuit decisions that the time for desegregation is now, that delays are no longer tolerable. The case of *Adams v. Mathews*, 403 F.2d 181 (5th Cir. 1968) clearly states "if in a school district there are still all-Negro schools . . . the existing plan fails to meet constitutional standards as established in Green." The only comprehensive plan before the Court is the previously discussed School Board Interim Plan for the school year 1969-70. Regrettably, this plan contemplates the operation of 38 all-black schools. Regardless of HEW's approval the plan does not meet Constitutional standards. The Court gave careful consideration to the alternative plans but their implementation, if Constitutional, was not feasible and would impair the operation of the Interim Plan.

At this eleventh hour a balance must be struck. To require immediate desegregation of all schools in Dade County would result in chaos. It is therefore the order of this Court that the Interim Plan for desegregation approved by the Dade County School Board at its July 25th meeting for the 1969-70 school year is, in all respects, adopted and approved by this Court. *United States of America v. The Board of Education of Baldwin County, Georgia, et al.*, ___ F.2d ___ (No. 27281, 5th Cir., July 9, 1969). This plan now being the order of this Court all persons are enjoined from attack upon or interference in any way with the operation of such except by appellate review. The School Board is directed to furnish to this Court within 30 days the results of a study delineating the administrative feasibility of total disestablishment of a dual school system at the elementary and junior high levels at the beginning of the second semester of the 1969-70 school year. Such study shall also include the following criteria:

(1) maximum utilization of school buildings;

(2) density of population;

(3) proximity of pupils to schools;

(4) natural boundaries; and

(5) welfare of students.

Henry v. Clarksdale Municipal Separate School District, et al., ___ F.2d ___, (No. 23255, 5th Cir., March 6, 1969).

The Board is also directed to furnish by March 1, 1970 a plan to eliminate the dual school structure in grades 10-12 by no later than September 1, 1970. The Court ap-

proves the collaboration of the School Board with the Florida Desegregation Consulting Center and the United States Department of Health, Education and Welfare and directs that the continuing cooperation of these agencies be sought in complying with the Court's order.

The Court retains jurisdiction of this cause for the entry of such further orders that may be necessary.

ENTERED this 29th day of August, 1969 at 6:00 p.m. at Miami, Florida.

/s/ C. CLYDE ATKINS

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1020-Civ-CA

December 10, 1969

SUPPLEMENT TO AND MODIFICATION OF ORDER ENTERED AUGUST 29, 1969

Filed December 10, 1969.

Since entry on August 29, 1969 of this Court's Order Approving the Interim Desegregation Plan for Dade County Public Schools, two decisions have been rendered by superior courts which materially affect the prospective provisions of that Order.

The first of these is *Alexander v. Holmes County Board of Education*, __ U.S. __, 90 S.Ct. __, 24 L.Ed. 2d 19 (October 29, 1969). That decision supervened all existing authority to the contrary. It sent the doctrine of deliberate s[illegible]d to its final resting place. 24 L.Ed.2d at 21.

The other decision is *En Banc School Cases*, __ F.2d __, (5th Cir., 1969) [Nos. 26285 and 12 others, slip opinion dated December 1, 1969] which strives to implement the command of the Alexander case. From this opinion this Court receives its instructions concerning the Dade County School System.

The district Court shall enter its final order not later than February 1, 1970 requiring and setting out the details of a plan designed to ac-

complish a unitary system of pupil attendance with the start of the Fall 1970 school term. *Id* at 11.

The court has concluded that two-step plans are to be implemented. One step must be accomplished not later than February 1, 1970 and it will include all steps necessary to conversion to a unitary system save the merger of student bodies into unitary systems. The student body merger will constitute the second step and must be accomplished not later than the beginning of the fall term 1970. *Id.*

Accordingly, the Dade County School Board is directed to take the following action, to the extent that such steps are applicable, not later than February 1, 1970:

DESEGREGATION OF FACULTY AND OTHER STAFF

The School Board shall announce and implement the following policies:

1. Effective not later than February 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each

school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

2. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

3. If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the school board will develop or require the development of non-racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria. Such evaluation shall be made available upon request to the dismissed or demoted employee.

"Demotion" as used above includes any assignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously; (2) which requires a lesser degree of skill than did the assignment he held previously; or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

MAJORITY TO MINORITY TRANSFER POLICY

The school district shall permit a student attending a school in which his race is in the majority to choose to attend another school, where space is available, and where his race is in the minority.

TRANSPORTATION

The transportation system, in those school districts having transportation systems, shall be completely reexamined regularly by the superintendent, his staff, and the school board. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

SCHOOL CONSTRUCTION AND SITE SELECTION

All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a manner which will prevent the recurrence of the dual school structure once this desegregation plan is implemented.

ATTENDANCE OUTSIDE SYSTEM OF RESIDENCE

If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfer into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system.

See *United States v. Hinds County, supra,* decided November 6, 1969. The orders there embrace these same requirements.

The Board shall file with this Court by January 13, 1970, a plan showing its intended compliance with the action contemplated in *En Banc School Cases, supra.* Objections, if any, to such plan and any alternate plans shall be filed by January 20. Hearing on these objections and alternate plans, if any, will be had at 9:00 a.m. Friday, January 23, 1970, in Courtroom 314. The Board likewise shall include the details of such action, as may be modified following the hearing on January 23, in the final plan for elimination of a dual school system to be filed with the Office of Education (HEW) and this Court by February 1, 1970.

To the extent that the prospective provisions of the Order entered August 29, 1969 are inconsistent with this Order, the former are modified.

ENTERED this 10th day of December, 1969.

/s/ C. CLYDE ATKINS

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1020-Civ-CA

Jan. 8, 1970

ORDER ON MOTION FOR CLARIFICATION

Because of the time impingements, this order is entered without notice or argument of counsel.

The *Singleton En Banc* decision requires that, effective February 1, 1970, "the ratio of Negro to White teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system."

I have heretofore approved the application of the teacher ratio on the basis of the ratios at each of the three levels of education, viz. elementary, junior high and senior high, because of certification requirement and availability.

The Final Staff Desegregation Plan of the Florida School Desegregation Consulting Center, dated January 7, 1970 follows implicitly the ratio of black to white teachers at the aforementioned three levels, viz. 24% black — 76% white in the elementary schools, 21% black — 79% white in the junior high schools, and 12.2% black — 87.8% white in the senior high schools.

The Dade County School Board has proposed modification of this plan in some respects so that, generally,

there is a greater ratio of black to white teachers in predominantly black schools than in predominantly white schools.

I have no choice but to follow the *Singleton* mandate as closely as may be practicable. Accordingly, the Motion for Clarification is granted in that it is suggested the Board submit a plan adhering to the recommendations of the Desegregation Center to the extent that teachers are available at the respective levels. In the event teachers are not available, permissible variations should be allowed.

This interim order and the plan to be submitted are subject to the objections and hearing thereon as provided in the order entered December 10, 1969.

ENTERED this 8th day of January, 1970 at Miami, Florida.

C. CLYDE ATKINS

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1020-Civ-CA

Jan. 15, 1970

MOTION TO AMEND ORDER

ALICE LOVE, CARSWELL WASHINGTON, MARGARET WASHINGTON, by and through their undersigned attorneys, move the Court to amend its Supplement to and Modification of Order entered August 29, 1969, which supplement was dated December 10, 1969, and to require the Dade County School Board to effectuate a unitary school system by February 1, 1970.

Dated this 15th day of January, 1970.

MATTHEWS, BRAYNON & MAPP
Attorneys for Plaintiffs

By: /s/ JAMES W. MATTHEWS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1020-Civ-CA

Jan. 20, 1970

MEMORANDUM IN SUPPORT OF MOTION TO AMEND ORDER AND ACCELERATE PUPIL DESEGREGATION

In this winter of the Negro's discontent, the unfinished business of the Emancipation Proclamation is glaringly apparent. In the year of the 107th anniversary of the Proclamation, America as then, is again at the turning of the fork. Americans are grappling with the dragon seed of "slavery". Again, as in the 1800's, we are face to face with the ancient truth: a house divided against itself cannot stand. Now is the time for dedication to the unfinished business of eradicating segregation and discrimination from every facet of American life.

Intervenors, however, seek not by their motion, to gain full and equal rights as any other American citizen, nor even to make the promise of democracy and equality of opportunity real for themselves, but only to protect their children against the moral dry rot of tokenism, moderation, evasiveness, denial and doubletalk of the respectable and gentle people of prejudice. Those who demand this now, February 1, 1970, having been denied since May 17, 1954, cannot be rationally criticized as impatient, hysterical extremists.

The *Brown vs. Board of Education*, 374 U.S. 483, 74 S.Ct. 686 decision decided May 17, 1954 was, at that time, considered a repudiation of the moral mockery of *Plessy vs. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138 (1896), and stated in simple, eloquent, and unequivocal terms that racial segregation was a violation of the letter and spirit of the American Constitution.

The clarity of the May 17, 1954 decision was followed by the ambiguity of the May 31, 1955 "deliberate speed" implementation decision. (*Brown vs. Board of Education*, 349 U.S. 294, 75 S.Ct. 753). This latter decision reflected the attempt on the part of the court to speak reasonably to allegedly reasonable men on the method of orderly transition. The crucial mistake was the fact that many of those in control of the political system who maintained political and economic power based upon a system of racial segregation were not reasonable men. The "deliberate speed" decree was interpreted by them as an invitation to evasion and indefinite postponement.

In light of the Supreme Court's January 14, 1970 decision in *Carter, et al., vs. W. Feliciano Parish, et al.*, Dade's Board of Public Instruction cannot continue its pattern of perfunctory verbalization against racial discrimination while actually accepting or abetting it. Nor can it remain fully comfortable in offering complicated, tortured, and "objective" rationalizations for the inevitability or continuation of racial injustices in the school system.

Any arguments predicated upon the size, uniqueness, hardship or cost as a consequence of a "now" order, may be infinitesimal when compared to the consequences of a

"not now" order. Though violence has been totally rejected by responsible Negro Americans as a technique to advance the cause of equal opportunity, this does not mean that his demands for his rights will be reduced because of fear of violence. They have adjusted and become accustomed to the chronic and stagnant death of humiliation and despair. There remains the danger that the deep bitterness and despair, if exacerbated by procrastination, intellectual cynicism, and political slicksterism, will excite in them a desperation and lawless defiance executed with a sincere belief that they, but only more crudely, follow in the footsteps of the State's chief political leaders.

The view from the bottom of the world is as important as the view from the top, so says Intervenors, ALICE LOVE, CARSWELL WASHINGTON, MARGARET WASHINGTON and all of the class, known and unknown, born and unborn, whom they represent, and who knows, but that on the lower frequencies they speak for you - DADE - FLORIDA - AMERICA.

WHEREFORE THEY PRAY.

Respectfully submitted this 20th day of January, 1970.

By: /s/ JAMES W. MATTHEWS

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1020-Civ-CA

Jan. 26, 1970

ORDER APPROVING TEACHER INTEGRATION PLAN AND DENYING MOTION BY INTERVENORS FOR IMMEDIATE PUPIL INTEGRATION

The background of this case is set forth in orders issued on August 29 and December 10, 1969. The former order approved the operation of the Dade County School Board under an interim integration plan endorsed by the Department of Health, Education and Welfare. The latter order implemented the opinion of the Fifth Circuit Court of Appeals in *En Banc School Cases*, __ F.2d__ (5th Cir., 1969) [Nos. 26285 and 12 others, slip opinion dated December 1, 1969] (hereinafter *Singleton*). The Dade County School Board was directed to submit a plan for full integration of the Dade County School System's instructional staff by February 1, 1970. I expanded the teacher ratio guideline set forth in *Singleton* because of availability and certification requirements at the elementary, junior high and senior high levels. The school system is to be broken down into three levels—grades 1-6, 7-9, 10-12. The ratio in a school on a particular level is to correspond with the ratio of black to white teachers in all schools on that level. The varying requirements for teachers on these different levels and their availability dictates such an expansion.

This plan was filed before me on January 13, 1970 and a hearing was held on January 21 to consider objections to that plan. The only objection filed was that of the Dade County Classroom Teachers Association, representing 75% of the teachers in this school system. The CTA urged that the plan prepared by the Florida Desegregation Center which follows precisely the ratios of *Singleton*, as modified by me, be approved. Evidence was presented at that time concerning the desirability of deviation up to 30% in certain schools from the *Singleton* guidelines. I am not unappreciative of the desire and reasons for continuity in the faculties of individual schools. However, I am bound by the *Singleton* mandate.

I find the plan, insofar as it follows the recommendation of the Florida Desegregation Center, in conformity with *Singleton* and, with the exception of two schools, approve such plan and order that it shall be accomplished as of February 9. The two schools excepted are Olinda and Arcola Park Elementary. In these schools special teacher training programs exist which warrant their exclusion from the black/white teacher ratio required of all other elementary schools. These programs will terminate at the end of this summer and beginning in September, 1970 these two schools will conform to the required teacher ratio.

The Court finds that it is imperative that the school system be closed to pupils from February 3 thru 6, 1970 for the purpose of conducting a human relations and orientation program directly affecting those teachers transferred.

Therefore, it is

ORDERED AND ADJUDGED that those days shall be considered to have the same number of pupils in attendance, absent, and in membership as on Wednesday, January 7, 1970, the last day of the fourth attendance reporting period, and that all State funds shall be distributed under the Minimum Foundation Program as though that number of children were in full attendance and membership in the Dade County Schools.

This plan now being the order of this Court all persons are enjoined from attack upon or interference in any way with the operation of such except by appellate review.

Also before the Court at this time is a motion by intervenors Alice Love, Carswell Washington, and Margaret Washington for immediate pupil desegregation in the Dade County School System. Joining as Amicus is the American Civil Liberties Union. This motion is based upon the recent decision of the United States Supreme Court in *Carter v. West Feliciana Parish School Board*, No. 944, and related cases, entered January 14, 1970. A hearing was held on January 22, 1970 on this motion, at which time this Court heard argument from all concerned parties as to the advisability of such immediate desegregation. Certain evidence was also offered by way of proffer at this time.

It is my decision that ordering total pupil desegregation by February 1, March 1 or any time prior to the opening of school in September of 1970 is not physically possible under the circumstances herein delineated. The evidence before me is that the only pupil desegregation plan which is available for implementation is that which

is to be filed by the School Board on February 1 in accordance with my order of August 29. This plan, in addition to being geared to September 1, 1970 implementation, provides that 21 schools in Dade County will have all-black student bodies. While this is a reduction from 38 all-black schools provided for in the interim plan now in operation, I do not find that such plan would meet the constitutional standard of a unitary school system as defined by the Fifth Circuit Court of Appeals in *Adams v. Mathews*, 403 F.2d 181 (5th Cir. 1968). The plan proposed is no more than another interim step in Dade County's progress toward a unitary school system. For this reason I find that disruption and chaos as reflected by the evidence, should not be visited upon the Dade schools merely to implement an interim plan. There is no plan available to the Court at present which would eliminate the all-black schools and it will unquestionably require substantial time to prepare such a constitutionally acceptable plan. Accordingly the motion of the intervenors is denied.

It is further ordered that the Dade County School Board shall submit a plan to this Court by April 1 which provides for the operation of a unitary school system by September, 1970 in accordance with the comments above. In this regard the Court notes the contention of the Classroom Teachers Association of the desirability of having each school operate with a ratio of black to white students equal to the ratio of black to students in the entire school system. Objections to such plan are to be served and filed by April 13, 1970. Hearings on that plan and any objections will commence at 9:30 a.m. on Friday, April 24, 1970.

The Court wishes to call the attention of the parties to the following excerpt from *Singleton* concerning appeals:

> In the event of an appeal or appeals to this court from an order entered as aforesaid in the district courts, such appeal shall be on the original record and the parties are encouraged to appeal on an agreed statement as is provided for in Rule 10(d), Federal Rules of Appellate Procedure, (FRAP). Pursuant to Rule 2, FRAP, the provisions of Rule 4(a) as to the time for filing notice of appeal are suspended and it is ordered that any notice of appeal be filed within fifteen days of the date of entry of the order appealed from and notices of cross-appeal within five days thereafter. The provisions of Rule 11 are suspended and it is ordered that the record be transmitted to this court within fifteen days after filing of the notice of appeal. The provisions of Rule 31 are suspended to the extent that the brief of the appellant shall be filed within fifteen days after the date on which the record is filed and the brief of the appellee shall be filed within ten days after the date on which the brief of appellant is filed. No reply brief shall be filed except upon order of the court. The times set herein may be enlarged by the court upon good cause shown.

ENTERED at Miami, Florida, this 26th day of January, 1970.

/s/ C. CLYDE ATKINS

UNITED STATES DISTRICT JUDGE

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1020-Civ-CA

Jan. 26, 1970

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that ALICE LOVE, CARSWELL WASHINGTON, and MARGARET WASHINGTON, Intervenors herein, hereby appeals to the United States Court of Appeals for the Fifth Circuit from that part of the Courts order denying intervenors motion for immediate pupil integration, said order having been entered in this action of the 26th day of January, 1970.

MATTHEWS, BRAYNON & MAPP
Attorneys for Plaintiffs
5032 N. W. 7th Avenue
Miami, Florida 33127

BY: /s/ James W. Matthews
JAMES W. MATTHEWS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

No. 69-1020-Civ-CA

Appeal Nos. 29039 and 29170

July 15, 1970

AMENDMENT TO NOTICE OF APPEAL

Intervenors, ALICE LOVE, CARSWELL WASHINGTON, and MARGARET WASHINGTON, hereby give Notice of this Amendment to their Notice of Appeal heretofore filed to the United States Court of Appeals for the Fifth Circuit.

The nature of this Amendment is to encompass, and present for review the order entered in the United States District Court for the Southern District of Florida, on the 26th day of June, 1970, by the Honorable C. Clyde Atkins.

The opinion and order appealed from is unconstitutional in that it fails to provide for a single unitary school system in Dade County, Florida.

MATTHEWS, BRAYNON & MAPP, P.A.
Attorneys for Intervenors-Appellants
5022 N. W. 7th Avenue
Miami, Florida 33127

BY: /s/ James W. Matthews

JAMES W. MATTHEWS